FROM DIVINE LAW TO UTILITARIAN LAW

The Epistemic Reversal of Revelation: From Divine Authority to Rational Expediency

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And the Rise of a Manufactured Liberal Islam

Author's Note:

This book was originally composed in Arabic, a language renowned for its depth, precision, and expressive richness. Every effort has been made to preserve the intellectual clarity and rhetorical power of the original. While no translation can fully capture all the subtleties of the source language, this English edition was developed with AI support and meticulously refined through multiple rounds of human review and editing, under the direct supervision and final approval of the author. It is offered as a faithful rendering that invites English-speaking readers into the heart of the original work's ideas and insights.

From Divine Law to Utilitarian Law,

Shari'a Under the Guillotine

The Epistemic Reversal of Revelation: From Divine Authority to Rational Expediency And the Rise of a Manufactured Liberal Islam

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Executive Summary

All praise is due to Allah, Lord of the Worlds, and peace and blessings be upon the noblest of Messengers. This is an expansive and rigorous usūlī (jurisprudential foundations) study that addresses the question of legislative authority between reason and revelation in Islamic thought, a foundational and delicate issue that must only be approached with the utmost methodological care and awareness of common pitfalls in reasoning.

This book presents an in-depth critical study of the roots of the transformation in the frame of reference for legislation within Islamic thought, from divine law to utilitarian law. It examines the origins of contemporary liberal Islam and discusses either the role of liberal Islam in producing 'minority jurisprudence' (fiqh al-aqalliyyāt), or conversely, the role of 'minority jurisprudence' in producing liberal Islam. The study proceeds from establishing the foundational relationship between reason and revelation, while confronting intellectual currents that have sought to elevate reason, particularly in its Western modernist formulation, as a reference superseding the sacred text or rivaling its authority.

Primary Objective of the Book

This study aims to re-establish the authority of revelation as the foundational source of Islamic legislation, while refuting claims that elevate isolated human reason or prioritize "public interest" (maṣlaḥa) in its modern, secular sense over the rulings of the Sharī'a. It highlights the intellectual and social consequences of such shifts and the distortions they have introduced into Islamic jurisprudence and public discourse.

Overall Structure and Main Themes

1. **Reason and Revelation in Islam:** The first chapter lays out the philosophical and jurisprudential basis for reason's place in Islam, affirming that reason is a servant to revelation, not its judge. It distinguishes between innate reason aligned with revelation and reason influenced by secular and materialist philosophies, demonstrating the inability of reason to generate legislation independently.
2. **The Usūlī Method and the Primacy of Text:** The second chapter details the foundations of legal reasoning in Islamic jurisprudence, emphasizing the centrality of Qur'ān and Sunnah in deriving rulings. It asserts the precedence of definitive texts over speculative considerations such as perceived benefits (maṣlaḥa) when conflict arises.
3. **Deviant Trends Undermining Revelation:** Chapter three addresses historical and contemporary trends that have undermined scriptural authority, including modernist and rationalist movements. It explores how an abstract, decontextualized rationalism infiltrated Islamic thought during times of intellectual decline and Western dominance.
4. **Critique of the Rationalist Maṣlaḥa School:** The fourth chapter traces the intellectual origins of those who elevated maslaha (perceived benefit) and maqāṣid (objectives) above the text. It critiques the reinterpretation or dismissal of scriptural injunctions under the pretext of changing times and contexts, a trend rooted in al-Ṭūfī's ideas and later expanded by contemporary scholars.
5. **The Modern Rationalist School: Afghani, 'Abduh, Riḍā:** From the fifth chapter onward, the book provides a detailed exposition of the reformist school led by Jamāl al-Dīn al-Afghānī, Muhammad 'Abduh, and Rashīd Riḍā. It shows how this school redefined Islam through a Western modernist lens, promoting a "modernized Islam," encouraging rational reinterpretation and interest-based reasoning at odds with classical usūl. The book further examines this school's influence on minority fiqh, legal balancing approaches, leniency toward man-made laws, nation-state paradigms, and nationalist ideologies.
6. **Contemporary Deviations from Scriptural Authority:** The book analyzes prominent modern fatwas that illustrate the deep penetration of rationalist-interest-based reasoning, such as:

- Permitting interest-bearing bank transactions
- Permitting employment in usurious institutions
- Permitting Muslim women to marry non-Muslim men
- Equal inheritance for men and women
- Denial of the ḥadd punishment for apostasy and stoning
- Defending Western democracy as a legislative system

7. **Critique of Western Modernist Thought:** The final chapters critique modern Western ideologies as they have been introduced under the guise of Islamic renewal, focusing particularly on the RAND Corporation's *Civil Democratic Islam* as a prime example of engineered religious reform aligned with Western values. It examines tools such as textual reinterpretation, prioritization of public benefit, and the promotion of individualistic liberal Islam in contrast to legislative, prophetic Islam.

Conclusion and Findings

The book concludes that the severance of Muslims from the authority of revelation, and their subjection of scriptural rulings to Western rationalism and benefit-centric reasoning, constitutes a grave threat to Islamic identity, principles, and worldview. It calls for a return to the classical usūlī methodology rooted in Qur'ān and Sunnah, which governs both reason and benefit within its framework, rather than subordinating revelation to either.

Introduction

All praise is due to Allah, Lord of the Worlds, and peace and blessings be upon the noblest of Messengers. This is an expansive and rigorous usūlī (legal-theoretical) investigation of the question of legislative authority between reason and revelation in Islamic thought, a foundational issue that must not be approached except with the utmost care in grounding, and full awareness of methodological errors to avoid them.

This study aims to critique the idea that human reason has the capacity to legislate or serve as the authority in judging actions, whether by labeling them as good or evil, beneficial or harmful, rewardable or punishable, or by determining the public interest. It critiques the notion that the shar'ī ruling can be subjected to such rational estimations.

Some early Islamic legal schools did pursue the identification of the objectives (maqāṣid) of the Sharī'a as they apply broadly to the whole system. Usūl al-fiqh developed general principles either from shared causal patterns found in many scriptural texts or from overarching rulings that encompass multiple cases. These produced general maxims usable across all branches of law. Some also attempted to extrapolate wisdoms and interests (maṣāliḥ) from specific legal rulings, assuming that behind these rulings lay benefits meant to be realized in society, whether material or immaterial.

They classified these interests into three categories:

1. Those explicitly acknowledged by Sharī'a texts, and thus derivable through analogy (qiyās) or sound reasoning from textual or consensus-based sources.
2. Those explicitly negated by the Sharī'a, like overriding the proper sequence of expiations (kaffārāt) in fasting violations, assuming that greater hardship would deter repeated violations a view invalidated by explicit verses and ḥadīths.
3. Interests for which no specific textual evidence exists for or against these are "murassala" (unanchored) but may still be supported by the general objectives of Sharī'a.

This third category became known as *maṣāliḥ mursala*, a foundational element in certain legal schools, notably later Mālekīs. They attempted to regulate the use of this principle by strict conditions to ensure it would not become a vehicle for whim or rationalist invention. Yet in practice, these methods were inconsistently applied. Even scholars like al-Shāṭhibī required exhaustive textual analysis to infer true maṣlaḥa, but these conditions were often overlooked in application.

The modern era, however, saw the emergence of a new rationalist method of defining benefit: one that does not derive interest from the texts, but assigns benefit by independent, decontextualized human reasoning. This method then subordinates, marginalizes, or even abrogates the revealed text in favor of this presumed benefit.

As the study will show, this deviation stems from the erroneous assumption that if a benefit is not explicitly affirmed or denied by the Sharī'a, then silence implies permission to legislate based on it. This opened the door for modern rationalist jurisprudence to expand beyond Shar'ī bounds, often under slogans such as "no harm, no harassment," or "legal rulings change with time and place," or "wherever benefit lies, there is God's law."

This has led to a grave phenomenon: the encroachment of reason upon revelation, the rationalization of vast segments of the law, and the subordination of divine legislation to modernity, pragmatism, and subjective utility. The end result is a secularized, liberalized Islam, engineered and stripped of its revelatory roots.

This study will establish, by Allah's will, that legislation belongs solely to God. The role of reason is not to legislate or judge, but to understand revelation through the usūlī method. Ijtihād in Islam is not free rational activity, but rather constrained, evidence-based derivation, governed by sound principles and overarching textual foundations.

The ultimate source of value, good, evil, reward, and punishment are revelation. If God were to leave legislation to competing human minds, which interpretation would He reward? Which would He punish? Would accountability rest on one mind's assumptions over another's?

"Do they have partners who have legislated for them from religion that which God did not permit?" (Qur'an 42:21)

"Say, 'Have you seen what Allah has sent down for you of provision, and you have made some of it unlawful and some lawful?' Say, 'Did Allah permit you, or do you invent lies against Allah?'" (Qur'an 10:59)

How can one claim the Sharī'a is complete, yet suggest that reason-based benefit supplements its shortcomings?

The Sharī'a, as the final divine legislation, offers complete and perfect guidance. It liberates man from the tyranny of arbitrary, human-centered judgments and anchors justice in divine command. The true benefit lies in following revelation, not defying it. It commands humanity to regulate its conduct and pursue its interests under the bounds of revelation alone.

This leads to the foundational question: Who has the right to legislate? Is it Allah, the Creator, who knows the hidden and manifest needs of His creation? Or is it man, fallible and blind to the unseen?

This question sits at the core of the dispute between Islamic orthodoxy and modern reformism, past and present. This book will, God willing, dismantle that dispute, trace its effects, and present the only legitimate alternative: revelation-bound lawmaking rooted in divine authority.

Research Methodology and Structure

This research consists of five main chapters, preceded by the introduction and followed by a conclusion presenting key findings and recommendations. It includes rigorous documentation of Qur'anic verses, Prophetic traditions, scholarly opinions, and referenced sources. The logical progression of the research unfolds as follows:

Chapter One: The Inadequacy of Reason and Its Inability to Serve as a Legislative Source This chapter examines the inherent limitations and deficiencies of the human intellect that render it incapable of producing a comprehensive and just legislative system. Drawing from Thaer Salameh's "*The Miracle of Islamic Legislation* and *The Black Box of Western Thought*, the chapter underscores the failure of human-devised systems to fulfill societal objectives apart from revelation. It also exposes how rationalistic legislation is often entangled with personal desires and cultural relativism, rendering it unsuitable as a universal reference.

Chapter Two: Critique of Maṣlaḥa Mursala and the Distinction Between 'Appropriateness' and Modern Rational Benefit This chapter investigates the classical concept of *maṣlaḥa mursala* as addressed by usūlī scholars. It draws extensively from *Al-Maṣāliḥ al-Mursala* by Dr. Maḥmūd 'Abd al-Hādī Fā'ūr, *Islamic Personality Vol. III (Usūl al-Fiqh)* by Taqī al-Dīn al-Nabhānī, and *The Objectives of Sharī'a in the Thought of Imam al-Shāṭibī,* also by Dr. Fā'ūr, among other references. It clarifies that the concept of *maṣlaḥa mursala* is not detached rational legislation but rather built on the general purposes and overarching principles of the Sharī'a. The chapter distinguishes between legally recognized 'appropriateness' (i.e., causation aligned with a legitimate Sharī'a objective) and the modern rationalistic invocation of benefit to alter rulings without valid Sharī'a evidence.

Chapter Three: The Evolution of Maṣlaḥa in Legal Thought and Its Modern Use in "Minority Fiqh," "Balancing Fiqh," and "Fiqh of Reality" This chapter outlines the historical development of the concept of *maṣlaḥa*, from its limited and disciplined use by early jurists such as Mālek and al-Ghazālī (always anchored in revelation), to its theoretical expansion in periods of decline, and finally to modern times where it underpins ideologies such as "Fiqh of Minorities," "Fiqh of Balancing," and "Fiqh of Reality." It analyzes the dangers posed by these trends, where *maṣlaḥa* becomes a pretext for bypassing definitive texts or altering rulings in the name of facilitation or necessity. The result is doctrinal deviation, such as claims of shifting definitive rulings or altering Sharī'a according to time and place.

Chapter Four: Reason in Epistemology and the Methodology of Sharī'a Reasoning Based on Thaer Salameh's *Theory of Knowledge and Methods of Reasoning*, along with his treatise on *Ijtihād and Taqlīd*, this chapter argues that reason is a tool for understanding the text and deriving Sharī'a rulings, not an independent legislative source. It outlines the proper function of reason in Islam: reason is the basis for moral accountability and a means to comprehend revelation. Through disciplined reflection and inference, it helps uncover the Sharī'a's methodology, societal aims,

general principles, and practical benefits. However, all of this is done in service of the text, not as its rival. The chapter also expounds on the proper method of *ijtihād* as defined by the scholars, an effort to extract rulings from the sources, not to override them with unbounded opinion.

Chapter Five: Modern Rationalist Schools from ‘Abduh and Afghani to the Present This analytical chapter critiques the rise of modern rationalism led by Jamāl al-Dīn al-Afghānī, Muhammad ‘Abduh, and Rashīd Riḍā, extending to contemporary figures who have advanced the slogan of religious renewal by placing reason (and what they term ‘rational maqāṣid’) above the sacred texts. It presents illustrative examples such as ‘Abduh’s fatwa permitting bank interest under the guise of public benefit, in defiance of scholarly consensus. It also critiques contemporary reformists who justify suspending ḥudūd or altering family law under the banner of maqāṣid or modern needs. This chapter exposes the internal contradiction of such approaches: while claiming to champion reason and interest, they ultimately dismantle the structure of divine law and open the door to human whim.

Conclusion The conclusion consolidates the research’s findings: revelation holds absolute legislative authority, and human reason is incapable of independent lawmaking. It recommends strict adherence to the methodologies of the great scholars of Islam and their recognized legal schools in interpreting texts and applying *ijtihād*. It warns against the abuse of maqāṣid to nullify rulings and calls for renewed fidelity to the usūlī tradition. May Allah guide and benefit all seekers of knowledge through this work, clarify the path of the believers, and expose the claims of falsehood.

Chapter One: The Inadequacy of Reason and the Impossibility of Its Serving as a Legislative Source

Chapter Summary: Affirming Revelation as the Foundation of Islamic Law.

This chapter lays the foundational framework of the book, establishing that ultimate legislative authority in Islam belongs solely to divine revelation, embodied in the Qur'an and the authentic Sunnah. It opens by affirming the necessity of grounding legislative thought in servitude to Allah, which entails full submission to His role as the exclusive Legislator. Any notion that elevates reason or subjective interest to an independent legislative status is categorically rejected. The chapter contrasts man-made legal frameworks rooted in human autonomy with Islamic legislation, which is rooted in divine revelation. It highlights how the former inevitably results in relativism and legislative chaos, while the latter ensures justice, consistency, and moral coherence. The chapter provides detailed textual proofs affirming the exclusivity of divine legislation and addresses common misconceptions regarding the role of reason in Islam, clarifying that in the Islamic paradigm, reason serves revelation, not the other way around.

Among the chapter's most significant topics is a systematic study proving the utter inability of human reason to produce sound legislation. It delineates the essential characteristics legislation must possess to be fit for governing human life and societies and exposes the devastating impact of formulating legislation subject to the winds of relativism, utilitarianism, and constant change upon societies. The chapter further establishes the necessary arguments to demonstrate the absolute reasons rendering reason – swayed by whims – unsuitable for legislation

It also critiques modern frameworks such as democracy and the social contract, which establish human-centered sources of authority in contradiction to the Qur'anic worldview. The chapter concludes by asserting that true civilizational liberation begins with reclaiming revelation as the sole legislative reference.

Content of Chapter One:

Science, the arts, literature, philosophy, history, jurisprudence, language, human progress, and civilization, all these are products of reason and thought. Knowledge is the core of human existence and the fruit of human intellectual endeavor. It is through rational inquiry into the world and life that man is elevated above other creatures or degraded below them. Knowledge harmonizes the self, or conversely, causes confusion and unrest; it offers clarity or entraps the mind in uncertainty.

Man occupies a central position in the cosmos. The universe, with its galaxies and celestial order, was created to welcome life, and life was fashioned in wondrous ways to receive humanity. The pinnacle of life's hierarchy is the rational human being, who ascends through the faculty of reason.

The intellect is man's instrument for recognizing his Creator and understanding his role in existence. Through intelligent analysis, comprehension, and inference, reason seeks to uncover the mysteries of creation. It is through the intellect that man becomes morally accountable.

Given this esteemed role of reason in the fabric of creation and man's superiority over other beings and given its use in establishing the link between creation and the Creator, it is undoubtedly a magnificent and powerful tool. Thus, its judgment when applied to evidentiary matters about God's existence and derived through sound reasoning is certain and binding. But when it comes to less profound matters, such as legislating how human life should be organized, can reason determine the goodness or badness of acts, or whether they merit reward or punishment, or whether they bring benefit or harm? The answer is no. Reason lacks the tools, capacity, and knowledge to legislate in such domains.

It must be emphasized: reason is unable, not merely forbidden, to issue judgments on these matters, because it was not equipped with the faculties necessary for such rulings. If reason could independently determine good and evil, its conclusions would align with divine law. But since reason and revelation often differ in their judgments, this decisively proves that reason lacks legislative competence.

Throughout this study, any reference to reason being fallible or varying in judgment refers not to reason itself, but to human desire and bias, which often masquerade as reason. In reality, humans do not legislate with pure reason; they legislate based on desire. Western civilization glorifies reason, but in practice, it is human whim that governs all things, even nature.

Thus, we must firmly reject the idea that limited human reason can serve as an independent legislative source apart from divine revelation. This chapter substantiates this by outlining the intrinsic flaws of human intellect and the historical failure of human experience, ancient and modern, to produce just, effective legal systems without recourse to divine guidance.

Preparatory Reflection for Chapter One: Why Examine the Conditions and Characteristics of Legislation?

The purpose of this chapter is not merely to offer a theoretical overview of legislation, but rather to answer a pivotal question: What qualifies any system of legislation, regardless of its origin, as valid and suitable to govern human life and regulate social behavior?

Human life cannot function properly without laws that regulate conduct, define relationships, secure rights, and prevent chaos, injustice, and corruption. However, legislation can only fulfill this role if it possesses specific characteristics that make it sound, just, and effective. A valid legislative system must be capable of:

- Achieving comprehensive justice without bias or oppression.
- **Maintenance of fundamental rights** defined by the Lawgiver for mankind, through which justice is established among members of society, and oppression and transgression against sanctities are prevented. Among the most prominent of these rights are: the right to life, bodily integrity, protection of honor, property rights (within divinely permitted bounds), the right to a fair trial, the duty of justice and equity in treatment, and the obligation to preserve the system of concepts, standards, and convictions upon which the state is founded and society has agreed. This is achieved through lawful mechanisms such as: *enjoining good and forbidding evil*, offering sincere counsel (*nasīḥah*), and holding authorities accountable (*muḥāsabah*). Consequently, people must be empowered to fulfill this duty, whether through forming political parties or directly undertaking their obligation to rectify wrongdoing, bearing responsibility therein. They must express opinions disciplined by the concepts and regulations of the Sharīʿah, free from slander, dissemination of immorality, subversion of values, or offense to sacred matters. This ensures counsel does not remain confined to its legislative framework, thereby preventing its degeneration into greater evil.

  The ruler is held accountable to prevent tyranny over rights or subjects through regulated mechanisms. Thus, this system is broader than merely permitting individuals to speak freely; rather, it forms part of an integrated framework imposing responsibilities upon society and its members to safeguard the nation's adopted system of values, concepts, standards, and convictions, preventing deviation therefrom. Human beings are bound by divine obligations (*takālīf sharʿiyyah*) to perfect their servitude to their Lord. This adherence to obligations alone preserves dignity and grants man his true meaning.

  Within this framework, and amid humanity's divine mandate to contemplate the creation of the heavens and earth, discerning the purpose and interpretation of existence, while intertwining this responsibility to seek truth with its profound obligatory, ethical, and existential dimensions, **the responsible, rational human being is guaranteed the right to choose his belief without compulsion to change it**. This safeguards his dignity and conscious choice, ensuring his freedom to adopt what he deems true. However, this freedom may not be exploited to:

  Dilute established creedal truths grounded in definitive rational and scriptural evidence, Blur distinctions between truth and falsehood. Such misuse would: Undermine the value of earnest truth-seeking. Weaken methodological commitment to attaining sound belief, Severweakenom from its existential dimension, and destroy the integrated system of: (**Reason / Evidence permeating creation / The intellectual process inferring therefrom),** which necessarily leads to the truth of Islamic creed. This destruction occurs only by disabling and transgressing against this system, an impermissible act inevitably divorcing *freedom of inquiry without compulsion* from its: Existential dimension and binding methodological rationality requiring adherence to evidence.

  This constitutes grave danger. Indeed, **Islamic Sharīʿah guarantees freedom of belief prior to faith in Islam itself**. However, *once conclusive proof is established*, it mandates steadfastness to the clarified truth, prohibiting the use of "freedom of belief" as a vehicle to: Demolish truth, or Recoil therefrom. For when truth is known by evidence, adherence becomes obligatory, not denial. Thus, **Sharīʿah guarantees non-Muslims in Dār al-Islām (the Abode of Islam) freedom to retain their beliefs** (without affirming their validity) and prohibits compulsion in conversion to Islam. Simultaneously, it **forbids trivializing serious intellectual inquiry**, degrading respect for reason and reflection. Foundational ideas *must* emerge from rigorous examination and verification; what is thus established may not be renounced after confirmation, hence apostasy from Islam is unacceptable. **These rights are inseparable from obligations** and cannot be detached from the divine value system. They are regulated by measures of truth, justice, and wisdom, governed by the higher objectives (*maqāṣid*) and values of Sharīʿah in securing human and societal welfare.

Humanity itself is *not* the reference for appraising benefit and harm; rather, **ultimate reference belongs to Divine Revelation**, with true honor lying in obligation to divine guidance.

A sound legislative system must also:

- Preserve public morality, stability, and societal integrity.
- Be rooted in a correct understanding of human nature and existential purpose.
- Address changing realities without compromising foundational values under the sway of interests or passions.
- Emanate from a supreme, legitimate source that commands binding authority, not from arbitrary majorities or unauthorized powers.

This chapter, therefore, demonstrates that legislation cannot be valid, beneficial, or binding unless it meets essential criteria in both source and substance:

1. It must be based on a deep and accurate understanding of the human being's needs, instincts, and existential aims, not on an incomplete view as seen in materialist or positivist philosophies.
2. It must originate from a source that is all-knowing, just, and wise, not from the limited, biased, and ever-changing human intellect.
3. It must be fixed in its overarching purposes, coherently oriented toward societal well-being, and harmonized in its legal mechanisms, free of contradiction and internal conflict.
4. It must realize authentic higher values, such as justice, dignity, and equality of opportunity, and not merely serve the interests of the powerful or codify moral decay.

The chapter further explains that the absence or corruption of legislation leads not only to legal dysfunction but to widespread societal ruin: family disintegration, moral anarchy, economic injustice, political paralysis, and spiritual emptiness.

Therefore, it is essential to define the qualities of valid legislation and expose the inadequacy of man-made systems based solely on reason without revelation.

Methodological Foreword:

Legislation in any society or state is not an end in itself, but a functional tool designed to regulate human behavior and relationships, organize public and private interests, and establish a framework for **organizing the procurement of benefits**[1] and repelling harm[2]. This role is only fulfilled when legislation reflects an accurate moral scale, differentiating between truth and falsehood, good and evil, benefit and harm, and aims to secure human well-being by guiding conduct and establishing an order of values and objectives that ensure personal rectitude, societal stability, and political justice.

Foundational and Functional Values in Legislation

Legislation seeks to realize a range of foundational and practical values that ensure its soundness and efficacy. These values can be divided into two main categories:

First: Foundational Core Values

These are indispensable principles without which legislation cannot fulfill its function:

1. **Comprehensive Justice** – Achieved through equitable distribution of rights and duties. Justice in Islamic law does not imply absolute sameness but fairness aligned with inherent roles and capacities. While men and women are equal in dignity and religious responsibility, their natural differences warrant differentiated roles and obligations to establish justice, not mere uniformity. Justice also includes:
    - Equal opportunity
    - Non-discrimination
    - Proportionality between sin and punishment or reward and deed

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[1] Note our phrasing: "**organizing the procurement of benefits**." This perspective does **not** view procuring benefit through *any means or legislation whatsoever* as the objective, nor is "benefit procurement" the *cause* ('illah) behind legislation. Rather, it concerns **regulating relationships through a system** whose adherence fulfills human needs, irrespective of debating *what specific utility or benefit* is expected from the legislation or *what harm* it prevents. Such debate is speculative (*ẓannī*) and relative (*nisbī*), sometimes valid but often invalid. This becomes a **dangerous angle** if adopted as the *criterion* for judging legislation's validity. Consider the financially capable person prohibited from usury (*ribā*): he may ask, "Did prohibiting *ribā* benefit me?" Deprived of material gain, he views the prohibition as failing to procure benefit since it restricts a means to increase his wealth. Hence Allah's declaration: ***"Whatever you give as ribā to increase people's wealth does not increase with Allah. But whatever you give in zakāh, seeking Allah's pleasure, it is they who will receive manifold."*** (Qur'an 30:39) **Increasing wealth through ribā is neither true benefit nor real growth.** Growth comes through *zakāh*, though you comprehend not. Similarly, a borrower might question the prohibition, believing his "benefit" is unmet due to lacking non-usurious financing, or he might rejoice at being shielded from *ribā*'s vortex. Thus, legislation plunges into **chaos and confusion** (*ḥayṣ biṣ*) due to people's divergent perceptions of benefit! The issue is **not** that humans should judge benefits/harms (*maṣāliḥ/mafāsid*) by personal opinions/whims: deeming "benefit" what pleases them or brings immediate material gain, and "harm" what displeases or damages them. These are **partial, insufficient measures** for correctly judging whether an action, system, legislation, or relationship **truly procures benefit** or **genuinely repels harm**. Such measures are **unfit as foundations for societal organization!** Allah Almighty has informed us: *Abstaining from jihād is self-destruction*, *fighting (though humans naturally detest it) is better for us*, *Allah knows, while you know not*. This is because sound judgment **cannot** focus selectively on certain aspects while ignoring others to determine good/evil, benefit/harm, or true benefit/harm. **Genuine procurement of benefits and repulsion of harms** can **only** be achieved through **correct organization**, attainable **solely by the All-Wise Lawgiver** (*al-Shāriʿ al-Ḥakīm*). **Wherever Divine Law exists, there lies true benefit.** If a system originates from limited humans, incapable of fully perceiving benefits/harms, good/evil, virtue/vice, it **inevitably fails** to correctly achieve public welfare (*maṣāliḥ ʿāmmah*). Conversely, **divinely revealed legislation** (*tashrīʿ rabbānī*): Achieves people's wholesome livelihood (*ṣalāḥ maʿīshah*), Prevents them from spreading corruption on earth, Establishes justice and goodness.

[2] The procurement of benefits (*jalb al-maṣāliḥ*) and repulsion of harms (*darʾ al-mafāsid*) are **absolutely not** the legal cause (*'illah*) for Sharīʿah rulings. No textual evidence exists indicating they serve as the *'illah* for Sharīʿah rulings in general, nor for any specific ruling. Therefore, they cannot be considered valid legal causes (*'illah sharʿiyyah*). This is especially true since **true benefits and harms are epistemologically inaccessible to humans**. One may perceive benefit in a matter that actually contains harm, and vice versa. Consequently, rational estimations of benefits vary, rendering perceived 'benefit' itself **dependent upon the Sharīʿah ruling**, not the ruling dependent upon it. Our position **does not imply** that the Divine Law intends harm for creation. Rather, true benefit (*al-maṣlaḥah al-ḥaqīqiyyah*) and welfare (*al-ṣalāḥ*) - the core concern of Sharīʿah - is achieved not through what minds *subjectively deem* beneficial, but through **the divinely ordained system** that addresses needs (which some may call 'benefit' and others 'harm') by providing its definitive regulatory solution. That is: by entrusting the determination of benefit to God alone and establishing the correct legislative remedy (*'ilāj sharʿī*). **Wherever He legislates, there lies true welfare and benefit.** Observe how Sharīʿah alerts us to spheres of goodness and welfare - especially regarding what we neglect - as in His decree: ***'Go forth, whether light or heavy, and strive with your wealth and lives in the cause of Allah. That is better for you, if you only knew.'*** (Qur'an 9:41) Simultaneously, it legislates rulings **whose benefit does not derive from the act itself**. For example: Where is the tangible benefit in *raising the finger* during the Tashahhud in prayer? Where is the benefit in God's command to the Israelites: ***'Kill yourselves'***? ***'And [recall] when Moses said to his people, "O my people, you have wronged yourselves by your taking of the calf [for worship]. So repent to your Creator and kill yourselves. That is better for you in the sight of your Creator."'*** (Qur'an 2:54) Thus, **true benefit** (*al-maṣlaḥah 'alā al-ḥaqīqah*) lies in **obeying God's commands**, not necessarily in the intrinsic nature of the act, nor in what "reason estimates or desires imagine to be beneficial according to their inclinations, whims, and interests.

2. **Upholding Rights and Restituting Wrongs** – Securing basic human rights, protecting life and dignity, and ensuring that those entitled to rights can obtain them through clear and effective legal mechanisms. It also entails the absolute prohibition of all forms of oppression, material, moral, or institutional.
3. **Preservation of the Eight Essentials** – The legislation must protect:
    - Religion
    - Life
    - Intellect
    - Wealth
    - Progeny (family structure)
    - Societal security
    - The integrity of the state
    - Human dignity. These are foundational maqāṣid (objectives) that all Sharīʿa rulings are expected to support and uphold.
4. **Reference to a Supreme Source** – The legislation must be grounded in a higher moral authority that defines good and evil, reward and punishment, and right and wrong in a stable and uncompromising manner. This ensures internal moral motivation and voluntary adherence due to recognition of the authority's legitimacy.

Second: Essential Societal and Organizational Values

1. **Social and Political Stability** – Legislation must be a source of societal order, not discord.
2. **Family Protection** – As the foundational unit of society, the family must be preserved by laws regulating gender relations, marriage, divorce, inheritance, and the prohibition of destructive practices like fornication, abortion, and same-sex relations.
3. **Accountability and Role Clarity** – Legislation defines individual and institutional responsibilities:
    - The woman's roles as mother, wife, and community member, each with associated duties and legal consequences
    - The responsibilities of rulers and state institutions
    - Legal liability for all decisions and actions, no one is above the law.
4. **Public Security and Order** – Ensuring physical, psychological, and moral safety; combating crime, drugs, disorder, and corruption.

Third: Economic and Developmental Values

1. **Just Wealth Distribution and Ownership** – Laws should prevent exploitation by:
    - Banning usury, monopolies, and fraud
    - Supporting economic balance and social solidarity
2. **Regulating Labor and Property** – Protecting rights in employment, contracts, ownership, and commercial responsibilities.

Fourth: Sovereignty and Civilizational Identity

1. **Legitimizing the State and Governance** – Establishing the legal basis for state authority and defining state-society relations. Sovereignty belongs to divine law (Sharīʿa), and political authority lies with the ummah (Muslim nation).
2. **Civilizational Identity** – Legislation must produce a nation with a distinct cultural and civilizational profile.
3. **Holistic Social Systems** – Legislation should govern all spheres: economy, politics, family law, criminal justice, judiciary, and more.

Section One: The Necessity of Legislation to Regulate Conduct and Social Relations

1. Human Nature Requires Legislation

- Man is a social being who does not live in isolation. Social interaction breeds conflict of interest, unequal power, and competing ambitions.
- Without law, man becomes guided by desire and immediate gain, resulting in chaos.
- Greed, selfishness, and deceit will dominate without a superior authority to restrain them.

2. Societal Relationships Require Legal Regulation

- All human relations, marriage, commerce, governance, and administration require a legal structure to protect rights and resolve disputes.
- Without legal boundaries, the strong exploit the weak, and justice collapses.
- Absence of law results in widespread injustice, fraud, betrayal, and rights violations.

3. Catastrophic Consequences of Absence or Corruption of Law

- **Family Breakdown** – Without laws for marriage, divorce, and inheritance, family structure collapses.
- **Social Injustice** – Without fair wealth distribution, economic disparity worsens.
- **Moral Disintegration** – Illicit relationships and births outside marriage proliferate.
- **Loss of Security** – Crime spreads without deterrent laws; society becomes a jungle.
- **State Failure** – Unchecked power leads to tyranny, state dysfunction, and institutional collapse.

4. Law Cannot Be Left to Human Whim

- Historical evidence shows that societies legislating based on self-interest fall into contradiction, elite domination, and constant legal revision.
- No universal agreement on legislation is possible without a higher reference.
- Values shift with cultural, economic, and political changes, making human law unstable and untrustworthy.

5. Necessity of Binding Authority

- There must be a superior entity that enforces law, either through internal conviction or external power.
- Divine legislation creates moral compulsion because individuals see it as a divine obligation.
- Modern societies, despite professing freedom, enforce strict laws on taxes, commerce, identity, and security, showing that coercive law is inevitable.

Section Two: Legislation Must Be Sound—Errors Lead to Grave Harm

Legislation, by its very nature and function, is not a provisional legal activity or a set of culturally contingent opinions. It is a comprehensive system designed to:

- Govern behavior.
- Define duties and relationships.
- Regulate individual and institutional life.
- Provide public welfare.
- Address societal challenges.
- Establish order, justice, security, and mercy.

Thus, it cannot be subject to experimentation or human error. It must emanate from an absolute, wise, and just authority, namely, the Creator. Errors in legislation lead to catastrophic consequences:

1. **Corruption of Public Welfare**

- When flawed laws are enacted (e.g., legalizing marijuana), the effects extend beyond users to the broader society, rising crime, reduced productivity, and mental decline among youth.

2. **Destruction of Social Relationships**

- Inconsistent laws undermine societal values, increase conflict, and erode trust in justice systems.

3. **Collapse of Justice and Rise of Oppression**

- Legalizing usury skews wealth distribution: the rich profit effortlessly while the poor sink into inescapable debt.

4. **Practical Examples of Corrupt Secular Legislation**

- Large-scale loans with 15% interest inflate project costs, burden consumers, and link domestic economies to foreign capital.
- When projects fail, debt spirals escalate, leading to bankruptcies, unemployment, and inflation, as seen in crises like the 2008 global recession.
- Case: In Canada, based on flawed hair drug testing (Motherisk), children were taken from their families. Years later, tests were deemed invalid. Over 35,000 custody cases were tainted, 50 children were permanently removed, and thousands were unjustly separated, all based on pseudo-science passed as law.

This tragedy reveals the danger of flawed legislation. It is not a minor policy mistake; it can shatter lives. To legislate without divine guidance is to gamble with people's lives using a defective compass.

5. **Final Conclusion**

- Every flawed, hasty, or biased law leads to societal catastrophe, morally, economically, and politically.
- Therefore, reason alone cannot be trusted to legislate. Only divine revelation can anchor a truly just and effective legal system.

Section Three: Legislation and the Human Being Between Rigidity and Flexibility, Constancy and Change

Some mistakenly assume that since human life is dynamic, the essence of human beings must also be constantly changing; thus, legislation must evolve to reflect these changes. However, the truth is that the *nature* of the human being does not change. From Adam to the present day and until the end of time, the essential human constitution remains the same. Human nature consists of intellect and emotion, instincts and organic needs, and the actions taken to fulfill them. These arise from a constant biological energy, which requires proper regulation to ensure balanced individual and social behavior.

This regulation, governing how humans satisfy their vital drives, must be rooted in fixed principles. For example, same-sex behavior can never be considered an acceptable fulfillment of the sexual instinct in one era and unacceptable in another. Usurious financial gain or monopolistic practices can never be virtuous in one age and immoral in another. Discovering a new form of alcohol or marijuana doesn't make its consumption lawful; it remains impermissible under the consistent rulings regarding intoxicants.

Thus, the legal judgments that regulate the behaviors by which humans fulfill their innate drives and classify things as lawful or unlawful are fixed. These rulings apply to humans as *humans*, whether individuals or participants in society. New problems or social phenomena are addressed using the same foundational principles and values that anchor the entire legislative system.

Technological or infrastructural advancement doesn't change this: flying in an airplane doesn't change the Islamic ruling on shortening prayers while traveling, just as riding a donkey doesn't alter it. Using a fork and knife to eat pork does not render it lawful. The human being remains the same regardless of tools and circumstances.

On a societal level, the rulings regarding political authority, public accountability, collective consultation (*shūrā*), preservation of social norms, state responsibility, and resource management are similarly fixed. Islam unequivocally condemns usurpation of power, mandates resistance against occupation, and upholds public participation in governance.

The Inadequacy of Human Reason as a Source of Legislation

Given the proven need for legislation and the necessary qualities it must possess, the question arises: Can human reason independently produce such legislation? Despite its enormous capacity for thought and invention, reason is inherently limited. Its shortcomings make it incapable of creating legislation that meets the necessary standards. The core flaws of human reason as a legislative authority include:

1. Relativity and Subjectivity

- **Cognitive Relativity:** People differ vastly in understanding and prioritizing values, leading to inconsistent assessments of good and harm.
- **Lack of Universal Standards:** Human reason is shaped by environment, culture, and interests. It lacks an objective, absolute standard by which to legislate.
- **Divergent Interpretations of Core Concepts:** Nations and individuals differ in their understanding of justice, freedom, benefit, etc., leading to confusion and contradiction.
- **Inability to Operationalize Values:** While values like justice and benefit are universally accepted in name, they require precise systems to implement them, a task that reason alone cannot fulfill.
- **Influence of Desires and Short-Term Interests:** Without divine constraints, human assessment of good and evil becomes driven by emotion, experimentation, and trial-and-error.
- **Failure of Democratic Systems:** Democracies often produce laws under the guise of majority will that reflect elite or partisan interests rather than genuine public consensus.
- **Inability to Achieve Rational Consensus:** Rational agreement on unified legislation is practically impossible due to fundamental differences in worldview.
- **Need for a Transcendent Source:** The inherent limitations of reason demand a higher legislative authority grounded in wisdom and justice, i.e., divine revelation.

Reason varies in its ability to assess harm and benefit, grasp legislative coherence, and understand long-term consequences. There is no such thing as a pure, objective, infallible human intellect free of bias and passion. The idealized rational mind that transcends desire and ignorance does not exist in reality.

Human reasoning is influenced by cultural, social, and psychological factors. Therefore, the same issue may be judged as virtuous by one person or culture and wicked by another. This inconsistency extends even to core concepts like justice, liberty, rights, duty, and public welfare. Consequently, any legal system based solely on human reasoning will lack the stability, universality, and internal coherence necessary for long-term societal function.

Take the example of *justice *, a universally admired value. The challenge is not in agreeing on its importance, but in determining how to achieve it. Justice is realized not in abstraction, but through specific laws and policies. If these are based on limited human foresight, they will likely produce unintended injustices. The same logic applies to benefit and harm: we cannot assess them without a standard rooted in divine insight.

Moreover, perceived "benefit" often centers on individual gain. When the intent is public benefit, opinions vary on how best to achieve it. Desires, short-termism, and flawed experimentation take hold. Without a divine moral compass, the outcome is often devastating.

As demonstrated in *The Black Box of Western Thought*, societies fail to reach a genuine rational consensus on laws. Even in democracies, laws do not reflect true collective will. Elections are skewed by biases, exclusion, manipulation, and disproportionate representation. Laws are passed not through real consensus but under the pretense of majority rule.

Elected lawmakers seldom consult their constituents on individual laws. Instead, they legislate from narrow interests while claiming to represent the public. The result: laws imposed in the name of democracy that are neither consensual nor just.

Hence, human reason, relative, biased, and fallible, cannot be the foundation of universally binding, just, and coherent legislation. What is needed is a transcendent reference point, with comprehensive wisdom and perfect justice: divine revelation.

The Structural Deficiency of Human Legislation Submission of Reason to Desire, Bias, and Short-Term Interest

Summary:

1. **Human reason is inherently biased**: It is shaped by emotion, interest, ideology, and social background, preventing it from generating neutral or objective legislation.
2. **Desire is inseparable from both individual and collective reasoning**: Human beings and even more so groups are inherently influenced by desires, making collective legislation (e.g., democracy) inevitably biased.
3. **Legislation often serves elite or class interests**: Laws are frequently tailored to benefit powerful groups rather than ensuring justice for all.
4. **Unconscious ideological pressures distort legislation**: Legislative drift may occur not by intent but through cultural, media, or ideological pressures that undermine fairness and balance.
5. **Materialistic and hedonistic frameworks dominate legal reasoning**: Laws increasingly serve pleasure, utility, or economic gain at the expense of values like modesty, family, and environmental protection.
6. **Desire is legalized under the guise of 'freedom' and 'rights'**: Concepts like personal freedom and choice are used to justify moral and social corruption.
7. **The Qur'ān warns against legislating based on desire**: The Qur'ān commands adherence to divine legislation and equates following one's own desire with elevating it to the status of a deity.
8. **Human legislation, when subject to desire, produces unjust, destructive laws**: These laws masquerade as liberating but often erode moral and social foundations, highlighting the urgent need for divine legislative authority.

Details:

The human intellect is not a neutral entity free from subjective forces; it is embedded in psychological and social influences, desire, interest, political orientation, and cultural upbringing. These structural dependencies render it unqualified to establish universally just, impartial laws. The absence of pure reason is evident both in individuals and collectives: personal emotions are inseparable from thought, and collective decision-making magnifies competing desires.

Thus, legislation based on "popular will" or democratic consensus is unavoidably subject to interest, bias, and cultural distortions. The human may believe he is legislating rationally, but in truth, he is guided by ideological residue, short-

term benefit, class interest, or the desires of influential elites. As a result, much legislation simply serves those in power, rather than establishing justice.
Sometimes this bias is not intentional. Lawmakers may subconsciously yield to ideological trends, public opinion, or media pressure, crafting legislation that mirrors the dominant mood rather than balanced moral reasoning. This is particularly true in capitalist societies, where laws favor economic benefit even at the expense of virtue, family, or the environment.
Similarly, when laws are justified under slogans like "personal freedom" or "the right to choose," the result is often moral and social decline, not liberation. Corrupt instincts are normalized, and destructive behaviors are legalized. The Qur'ān clearly warns against this legislative deviation:
"Judge between them by what Allah has revealed and do not follow their desires." (Al-Mā'idah: 49)
And further:
"Have you seen the one who takes his own desire as his god?" (Al-Jāthiyah: 23)
This stark warning shows that to legislate based on desire is to submit to a false god. It transforms subjective impulse into sovereign authority, an inversion of true worship and moral order.
Thus, human lawmaking driven by desire produces biased, destructive systems that serve narrow factions or enshrine self-interest under attractive slogans. The solution is a divine legislative reference point, guided by perfect knowledge and justice.

The Temporal Limitations of Human Reason (Inability to Perceive Consequences)

Summary:

1. **Reason is limited in its foresight**: It cannot accurately predict long-term consequences or assess the outcomes of actions in a comprehensive way.
2. **It depends on prior knowledge**: Reason cannot create new concepts or laws from nothing; it requires data and precedent.
3. **It is fit for metaphysical reasoning, not practical legislation**: While capable of affirming God's existence or other theological truths, it lacks the tools to legislate for actions and societal outcomes.
4. **It lacks an absolute moral reference point**: When faced with competing interests, material, moral, and spiritual, it cannot prioritize objectively.
5. **Without revelation, reason becomes a tool of desire**: Lacking divine guidance, its conclusions are often indistinguishable from subjective preference.
6. **Human law is transient and unstable**: Laws constantly change to meet short-term needs, undermining legal consistency.
7. **Endless legal patchwork reveals structural failure**: Constant revisions undermine legal credibility and public confidence.
8. **Divine law is timeless and complete**: Issued by the All-Knowing, it contains universal principles suitable for all times and places.

Details:

Reason cannot issue legislative rulings because such rulings depend on knowledge, insight, and tools it does not possess, such as knowledge of future consequences and a comprehensive understanding of reality. The intellect is confined to a limited domain; it cannot operate beyond what it senses or what has clear, observable effects.
It is also dependent on prior data and lacks an intrinsic moral scale to evaluate or prioritize competing outcomes. While it functions excellently in matters of metaphysical inquiry—e.g., deducing the existence of a Creator or identifying universal causality, it fails when applied to moral or legislative fields.
In matters like good and evil, reward and punishment, public interest, or legal fairness, reason only partially grasps the current reality. It is blind to future ramifications, blind to how diverse outcomes interact, and unable to resolve competing values (e.g., material vs. spiritual benefit).
When we ask whether something benefits or harms us, the intellect struggles: is the benefit material, moral, social, or spiritual? Which takes precedence? Without divine guidance, there is no reliable method for resolving these conflicts. The intellect simply cannot issue trustworthy, binding rulings.

Expecting it to do so is like expecting a beautifully engineered car to fly; it lacks the tools. No matter how advanced our thinking, we cannot predict how proposed laws will interact with real-world behavior or future conditions. Societies change, contexts evolve, and unintended consequences abound.
Thus, man-made legislation often suffers from shortsightedness. It attempts to solve immediate problems but quickly becomes obsolete, contradictory, or in need of amendment. Endless revisions create legal instability. Public trust erodes. The system loses coherence.
Studies in law and sociology confirm this: human legislation cannot endure without constant modification. Legal systems devolve into patchwork structures, undermining the rule of law and eroding societal trust.
By contrast, divine law emerges from an All-Knowing Legislator who encompasses past, present, and future. It governs humans *as humans*, not as subjects of a particular era. Its principles are comprehensive, eternal, and perfectly aligned with the reality of human nature.
As the Qur'ān says:
"This day I have perfected your religion for you and completed My favor upon you and have chosen for you Islam as your religion." (Al-Mā'idah: 3)
This verse testifies to the finality and completeness of divine legislation, valid for every time and place, without need for revision or repeal.

The Spatial Limitation of Reason (Environment and Culture)

Summary:

1. **Reason is influenced by cultural and social context**: It does not operate in a vacuum but is shaped by local norms, customs, and prevailing concepts, which limit its objectivity.
2. **Contextual bias makes human legislation relative, not universal**: What appears to be a 'benefit' in one society may be a 'harm' in another, leading to legal conflict and intersocietal discord.
3. **Human legislation is biased by its temporary civilizational context**: What is legalized in one morally corrupt or materialistic culture, such as sexual deviance or the dismantling of the family, may be catastrophic if universalized.
4. **Divine law addresses the human as a universal being**: In contrast to relative legislation, Islamic law is grounded in innate human nature (fiṭrah), revealed by the Creator, and is suitable for all times and places.

Details:

Human intellect develops within a cultural and social matrix. It is shaped by the customs, traditions, and dominant conceptual frameworks of its environment, including assumptions about good and evil, beauty and ugliness, benefit and harm. Consequently, reason is not neutral; it carries within it environmental and customary biases, rendering its conclusions local and context-bound, unfit to serve as a universal legal reference.
For example, a person raised in a materialistic society that sanctifies profit will naturally legislate to prioritize gain over ethics. Likewise, someone in a culturally deviant environment may legislate for incest or family dissolution under the guise of 'freedom'. What one society sees as a prevailing benefit, another sees as a pure harm. Hence, law ceases to be a means of justice and becomes a source of global contention, as seen in contemporary debates over abortion, same-sex relations, or capital punishment.
This proves that reason shaped by the environment cannot produce a universally applicable law. It is hostage to its context. By contrast, Islamic law emerges from the Creator of all humans, is addressed to all people, and is based on human fiṭrah, as the Qur'ān states:
"The natural disposition (fiṭrat) of Allah upon which He created mankind." (Al-Rūm: 30)
Thus, its rulings consider the human as a human, not merely as a product of a specific time or place. Divine law is therefore applicable across all times and places, unifying humanity under one ethical and legal system that safeguards dignity.

The Inadequacy of Human Reason to Comprehend Reality and Its Complexity

Summary:

1. **Human reality is multi-dimensional and complex**: It consists not only of material facts but also psychological, spiritual, social, economic, and political factors that reason alone cannot fully grasp.
2. **Reason is incapable of fully comprehending reality or cause-effect chains**: It cannot accurately map all elements of reality or reliably link causes to outcomes.

3. **Rational legislation struggles to balance competing values**: Human laws often fail to harmonize individual and collective needs, rights, and responsibilities, justice, and leniency.
4. **Experimental legislation leads to social catastrophe**: Many laws are enacted before their full effects are known, producing irreversible harm.
5. **Material indicators displace moral and spiritual concerns**: Legal success is measured in economic metrics or public approval, while moral breakdown spreads beneath the surface.
6. **Reason is unfit to legislate without divine illumination**: Its inability to apprehend the totality of human and societal complexity necessitates divine revelation.
7. **Legal judgment often involves conflicting, interdependent values**: These multi-variable tensions cannot be resolved by reason alone.

Details:

Human reason suffers from an inherent incapacity to comprehensively understand the complex reality it attempts to legislate. Human and social reality is multilayered, dynamic, and interdependent, shaped by biological, psychological, economic, political, spiritual, and moral dimensions. The attempt to control or structure this reality with purely man-made laws is a structurally flawed endeavor.

While intellect may analyze portions of reality through observation and study, it remains blind to the full range of distant effects, internal dynamics, human motivation, and long-term social impact. It cannot achieve holistic knowledge of the soul's aspirations, humanity's shifting needs, or the proper equilibrium between organic drives and moral responsibility. As Rousseau aptly stated: "Il faudrait des Dieux pour donner des lois aux hommes" – "We would need gods to legislate for men."

Even in empirical sciences like medicine, human understanding is still limited. Many conditions initially deemed psychological later proved to have organic origins. Drugs once hailed as cures have been revealed to cause long-term damage. If man cannot fully understand his own body, how can he claim to legislate for society or determine the long-term effects of legal decisions?

Moreover, legislation based on trial-and-error has led to immense damage: legalization of marijuana, implementation of atheistic or hypersexual curricula, only to discover the psychological and social devastation afterward. Similarly, success is measured in GDP, productivity, or temporary public satisfaction while societies unravel spiritually and emotionally. Therefore, reason alone cannot be the source of law. It lacks light. Divine revelation is the only source that provides the necessary guidance, as the Qur'ān declares: "Whomever Allah does not grant light—he will have no light." (Al-Nūr: 40)

Ignorance of Human Nature and Purpose

Summary:

1. **Reason cannot determine man's existential purpose**: Is life for pleasure, moral elevation, or divine worship? Only revelation can resolve this.
2. **Contradictory ideologies stem from ignorance of human nature**:
    - Capitalism treats man as a pleasure-seeking consumer.
    - Communism suppresses individual spirit and freedom.
3. **Man is a complex being knowable only to his Creator**: He consists of body, mind, soul, and instincts, all requiring balance and discipline.
4. **Only Islam comprehensively understands this complexity**:
    - Balances lawful pleasure with spiritual purification.
    - Links labor and wealth with charity and solidarity.
    - Encourages worship while affirming dynamic social life.
5. **True happiness lies in loving God and following His law**: Fulfillment arises from closeness to the Creator, not material benefit.
6. **Divine law must not be judged by reason**: Since reason is ignorant of man's true purpose, it cannot evaluate revelation; it must submit to it.

Details:

Human reason is most deficient in its understanding of man's nature and existential purpose. No matter how brilliant or experienced, the intellect alone cannot answer life's ultimate questions: Was man created solely for physical enjoyment? Or does he possess a higher calling that transcends worldly existence?
These unresolved philosophical questions led to conflicting ideologies:

- **Capitalism** defined man as a profit-seeking, pleasure-maximizing individual, fueling selfishness, anxiety, and social breakdown.
- **Communism**, in reaction, suppressed individuality, abolished private property, and stifled faith, leading to spiritual emptiness and state oppression.

Even Western legal schools differ:

- **Legal Positivism** disconnects law from morality, anchoring it in political authority regardless of ethics.
- **Natural Law Theory** ties law to universal moral principles.
- **Critical Legal Studies** rejects fixed values and views law as ideological.
- **Sociological Jurisprudence** adopts pragmatism and considers ethical values only if they support social cohesion.

All of this confusion stems from ignorance of the human being's complex reality. Man is not just a body or soul but a dynamic whole. His physical, emotional, intellectual, and spiritual needs must be satisfied in balanced, morally upright ways.
This knowledge is accessible only to his Creator:
"Does He who created not know, while He is the Most Subtle, the All-Aware?" (Al-Mulk: 14)
Islamic law uniquely addresses this complexity:

- It affirms human dignity.
- It regulates desire through chastity and family.
- It balances labor with charity and communal care.
- It enjoins worship and reflection without monastic withdrawal.

At its heart is a loving relationship with God, not just fear or submission, but reciprocal love based on divine mercy: "Say: If you love Allah, then follow me; Allah will love you." (Āl ʿImrān: 31). This love is cultivated by embodying the traits God loves: mercy, patience, generosity, and piety. It is not abstract. It's formed through continuous effort, testing, and purification of the soul.
God breathed into man His Spirit and planted in him the capacity to know and love Him. The journey to God is the summit of happiness in this world and the gateway to eternal bliss. Hence, divine law alone, not man-made systems, acknowledges man's true nature and fulfills his deepest needs. It aligns his urges with righteousness, guides him to his noble purpose, and delivers tranquility here and salvation hereafter.
This balance between body and soul, rights and duties, freedom and submission is something no human philosophy has ever achieved. Revelation is not subject to human approval. It must be received in love, humility, and obedience. Only then can man achieve what he was created for: to worship God, to cultivate the earth, and to attain balanced happiness in both worlds.

Society Must Not Be a Laboratory for Legislative Experimentation

Human laws are often implemented, modified, or repealed after causing real social, moral, or economic harm. This turns society into a testing ground for unpredictable policies. Examples abound: drug laws, abortion regulations, and financial practices, all frequently revised in response to harmful consequences. This undermines legal stability and harms both individuals and communities.

Legislation Must Be Stable and Universally Applicable

Divine law was revealed to provide the ultimate framework for human life. To fulfill this role, it must be:

- Stable in its foundational principles.
- Broad and applicable through disciplined ijtihād.
- Universally valid because it originates from the All-Knowing, All-Wise.

Stability in law is the bedrock of justice and social cohesion.

Law Must Be Tied to Its Higher Objectives (Maqāṣid al-Sharīʿah)

Justice, truth, and mercy cannot be achieved through arbitrary laws. Proper legislation must be grounded in real knowledge of reality. Any law that fails to prevent injustice or uphold truth is fundamentally flawed.
The core maqāṣid preservation of religion, life, intellect, wealth, and honor cannot be safeguarded by fluctuating human laws.

The Problem of Conflicting Goals and Interests

Human reason cannot consistently balance conflicting values such as security versus freedom, or public health versus personal choice, without falling into contradiction or subjectivity.
These dilemmas produce inconsistent legislation that undermines coherent social behavior and fails to preserve overarching values and collective interests.

The Need for Legislative Integration Across All Fields of Life

Islamic law provides an integrated system that unites creed, ethics, worship, transactions, public order, and politics. In contrast, secular systems suffer from deep contradictions between economic policies, civil liberties, criminal law, and family law due to a fragmented vision.

Foundations in the Philosophy of Law

Even in Western legal theory, particularly in natural law traditions, there is acknowledgment that true justice must come from beyond humanity.
Legal positivist schools, lacking moral anchors, also concede that legal validity does not guarantee justice.

Conclusion

It is evident that all human attempts at legislation, regardless of their technical or methodological sophistication, remain limited, biased, contradictory, and unjust. Human reason cannot independently define good and evil, foresee all legal consequences, or resolve interrelated normative dilemmas.
By contrast, divine law revealed by the Creator possesses all the qualities required for enduring justice and universal applicability. It alone can organize human life across all times and places. It is rooted in full knowledge of human nature, future consequences, and the delicate balance between rights and duties. It combines wisdom, mercy, facilitation, and relief from hardship.
Thus, legislation must be the exclusive domain of God. The divine sharīʿah, comprehensive, just, and eternal, is the only legitimate framework for guiding humanity. As the Qur'ān declares:
"The judgment belongs only to Allah." (Qur'ān)

No Ruling Precedes Revelation: Reason Is Not a Lawgiver

What did the classical scholars of Islamic jurisprudence say?
Man is legally responsible (mukallaf), and taklīf entails binding the responsible agent to do or avoid certain actions based on revelation. As the Qur'ān says:
"So remain steadfast as you were commanded you and those who have turned with you—and do not transgress. Indeed, He is All-Seeing of what you do." (Hūd: 112). There is no ruling before revelation. Al-Shawkānī wrote in *Irshād al-Fuḥūl* (p. 6): "There is no disagreement that the Lawgiver is the Sharīʿah after the advent of prophethood and the conveyance of the message." He adds (p. 14): "Reason does not obligate or prohibit in a legally binding sense; it merely guides man to what he must search for in the Sharīʿah."
Al-Ghazālī states in *Al-Mustaṣfā* (p. 40): "The subject of legislation is human action, and there is no ruling before revelation. Reason identifies rulings but is not their source."
In *Al-Mustaṣfā*, vol. 1, p. 61, he writes: "Sharīʿah ruling is the address of revelation regarding the acts of the legally responsible. Reason has no role in originating it."
Al-Nawawī says in *Al-Majmūʿ Sharḥ al-Muhadhdhab* (Book of Purity): "There are three views regarding whether things are permissible or prohibited before revelation. The soundest view among verifiers is that there is no ruling before

revelation, so a person is not judged sinful for an action before receiving divine law." He adds: "Our position and that of Ahl al-Sunnah is that rulings are only established through Sharīʿah, and reason does not independently establish any ruling."
Al-Shāṭibī states in *Al-Muwāfaqāt*, vol. 4, p. 200: "The basis for human action before the arrival of Sharīʿah is the suspension of legal obligation, for no ruling applies before knowledge of the ruling."
And in vol. 3, p. 53: "Rational proofs in the science of legal theory are valid only when built upon revealed evidence. Revelation remains the primary authority."
Al-ʿIzz ibn ʿAbd al-Salām writes in *Qawāʿid al-Aḥkām*, vol. 1, p. 16: "Rational assessments of moral good and evil have no bearing on legal rulings. The Lawgiver is Allah, not reason. If reason were independently authoritative, there would be no need for prophets."
Al-Āmidī confirms in *Al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 1, p. 105: "Reason imposes no obligation upon God and forbids Him nothing. The Lawgiver in religion is revelation, not reason."
Ibn Taymiyyah says in *Majmūʿ al-Fatāwā* and his commentaries on legal theory: "There is no ruling for things before the arrival of Sharīʿah... Whoever does not agree with the Muʿtazilah on rational good and evil maintains that the actions of the morally responsible have no legal status before revelation."
This is a decisive position and irrefutable evidence.

Limiting Prophetic Warning to Revelation

The Lord of the worlds, Exalted is He, commanded us to follow only the revealed law. He said:
“Whatever the Messenger gives you, take it; and whatever he forbids you—abstain from it. And fear Allah—indeed, Allah is severe in punishment.” *(Al-Ḥashr 59:7)* And: “O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is the best [way] and best in result.” *(Al-Nisāʾ 4:59)* And: “Then he neither believed nor prayed but denied and turned away. Then he went to his people swaggering. Woe to you, and woe! Then woe to you, and woe! Does man think he will be left neglected?” *(Al-Qiyāmah 75:31–36)* And: “The command belongs only to Allah.” *(Al-Anʿām 6:57, Yūsuf 12:40, 12:67)* And: “Whatever you differ about—its judgment is with Allah. That is Allah, my Lord. In Him I have placed my trust, and to Him I turn.” *(Al-Shūrā 42:10)*
Warning (nadhārah) can only come through revelation—exclusively and emphatically. There is definitive prohibition against following anything legislated apart from revelation. It is therefore necessary to preserve revelation so that prophetic warning may be established as a proof upon creation, to close the door to alien legal systems, and to enable people to follow none but divine revelation. As He said: “Follow what has been revealed to you from your Lord.”*(Al-Anʿām 6:106),* “Follow what has been revealed to you from your Lord, and do not follow other patrons besides Him. Little do you remember.” *(Al-Aʿrāf 7:3),* “Say: I only warn you by revelation. But the deaf do not hear the call when they are warned.” *(Al-Anbiyāʾ 21:45),* Revelation—comprising the Qur’an and Sunnah—is a complete proof and universal warning. Now that revelation has ceased, and no prophet or messenger will follow Muhammad ﷺ, to whom new laws might be revealed, Allah said: “Muhammad is not the father of any of your men, but he is the Messenger of Allah and the Seal of the Prophets.” *(Al-Aḥzāb 33:40).*
This indicates that the complete and conclusive divine proof must remain available to those addressed by Islam—both its creed and law—until the end of time. That proof must be necessarily and accessibly preserved, uncorrupted, and intact in both the Book and the Sunnah.
Thus, the system of Islam—both creed and law—is complete. No matter is left without a ruling from revelation, such that no space remains for human legislation to fill with injustice. Hence, the sharīʿah must be preserved in both Qur’an and Sunnah to perfect the divine favor and establish the measure of justice among creation until the Day of Judgment.

Ibn Ḥazm’s Refutation of the Notion of Legal Gaps

Imām Ibn Ḥazm al-Andalusī wrote: “This day I have perfected for you your religion, and completed My favor upon you, and approved for you Islam as your religion.” *(Al-Māʾidah 5:3)*
He said: We ask those who believe that what the Prophet ﷺ conveyed to us of the sharīʿah may not be preserved, or that it might be subject to alteration or mixed with fabricated lies to the point it is unrecognizable: Tell us, was Allah’s completion of the religion, His approval of Islam, and His rejection of all religions besides Islam—was that meant only for the Companions? Or for us as well? Or for neither? One of these must be true...
And since the only possible answer is that it applies to us and remains binding until the Day of Judgment, it follows necessarily that the laws of Islam are fully complete, and the favor upon us is truly perfected. This is decisive,

conclusive proof that everything the Messenger ﷺ conveyed to us in the religion and in legal explanation has been preserved and untainted by anything foreign to it.

No Legislative Gap: "This Day I Have Perfected for You Your Religion"

Many Muslims today, when deriving rulings, invoke the phrase "in matters where there is no text." Others divide interests into three categories:

- Those recognized by the law,
- Those nullified by the law,
- And "unregulated" (mursal) interests not directly addressed by any text.

Still others claim that some matters fall under the domain of divine "forbearance" a silence on the part of revelation. But is there really a **legislative void** that demands the intervention of human reason?

Upon closer inspection, the notion of a legal vacuum contradicts both the Qur'an and Sunnah, which unequivocally affirm that the religion is complete, and that there is no moral obligation without corresponding guidance. Every matter has been addressed.

Allah says:

"We have sent down to you the Book as a clarification of all things." *(Al-Naḥl 16:89),* "This day I have perfected your religion for you." *(Al-Māʾidah 5:3),* This clarification can take the form of:

- **Explicit ruling**: e.g., the prohibition of carrion, blood, and pork.
- **General texts**: e.g., "He created for you all that is in the earth," which implies permissibility unless otherwise specified.
- **Legal reasoning via causation ('illah)**: wherever the legal cause exists, so too does the ruling through analogy (qiyās).

The Misunderstood Ḥadīths on "Silence"

Some cite the ḥadīth reported by Ibn Mājah and al-Tirmidhī from Salmān al-Fārisī:

"The lawful is what Allah has made lawful in His Book, and the unlawful is what He has forbidden in His Book. And what He has remained silent about is part of His pardon."

And the narration of Abū al-Dardāʾ:

"Whatever Allah made lawful in His Book is lawful, and whatever He forbade is unlawful. And whatever He was silent about is a pardon—so accept from Allah His pardon. For Allah did not forget anything." Then he recited: *"Your Lord is never forgetful."* (Maryam 19:64), Also reported by al-Bazzār and al-Bayhaqī via Abū Thaʿlabah: "Indeed Allah has laid down obligations, so do not neglect them; and He has set limits, so do not overstep them; and He has forbidden things, so do not violate them; and He has remained silent about things as a mercy for you—not out of forgetfulness—so do not seek after them."

These ḥadīths are **aḥād reports**, meaning they are solitary narrations and do not override definitive Qur'anic proofs. Moreover, these reports do **not** imply that Allah failed to legislate on certain matters. Rather, they indicate that there are things He **did not prohibit**—out of **mercy**—so He **abstained from declaring them harām**, not due to negligence or omission.

When they asked about ghee, cheese, and furs—these were **permissible items** and Allah **did not prohibit them**, as a mercy to the people, not because He forgot to rule on them.

Hence, the subject of these ḥadīths is **not silence regarding legislation**, but rather **refraining from prohibition**.

Prophetic Silence Meant to Avert Undue Hardship

In *Fatḥ al-Bārī*, it is reported from Muslim (also in al-Bukhārī, Kitāb al-ʿIlm), from Thābit on the authority of Anas:

"We were forbidden from asking the Messenger ﷺ too many questions. We loved it when a desert Arab—ignorant of social restraint—would come and ask, so we could listen." And in the story of **liʿān** (mutual cursing) narrated by Ibn ʿUmar: "The Prophet ﷺ disliked excessive questioning and censured it." Also from Muslim, via Nawwās ibn Samʿān: "I stayed in Madinah for a year, and the only thing that stopped me from making hijrah (full migration) was fear of being forbidden from asking the Prophet ﷺ questions."

The meaning is clear: the Prophet ﷺ advised his Companions not to excessively inquire into issues for which no command or prohibition had been revealed—lest something *becomes* prohibited through their questioning. As in the authentic ḥadīth: "O people! Allah has made ḥajj obligatory upon you, so perform it." A man asked, "Every year, O

Messenger of Allah?" The Prophet ﷺ remained silent. He asked a second and third time, and the Prophet ﷺ replied: "Had I said 'yes,' it would have become obligatory—and you would not have been able to bear it." Then he said: "Leave me as long as I leave you. Those before you were destroyed by their excessive questioning and disagreements with their prophets. So if I command you to do something, do as much of it as you can. And if I forbid you from something, then avoid it."
Ibn Ḥibbān adds that the verse in *Sūrat al-Māʾidah* was revealed in this context: "O you who believe! Do not ask about things which, if made clear to you, would trouble you." *(Al-Māʾidah 5:101)*.
The intended meaning of "what He was silent about" is: what He **did not forbid** and thus **do not burden yourselves** by seeking unnecessary clarification that might lead to further obligations.

Refuting the Legislative Void

Now step back and ask yourself: If some aspects of life—such as daily practices or habits—were left **unregulated** out of mercy (not as lawful or unlawful), and we are told **not** to inquire into them, then what is our legal stance toward them?
If **Allah neither legislated on them nor authorized us to do so**, and these matters affect our daily lives—what should we do?
Those who seek **"legislative gaps"** must realize:

- If Allah has left it unregulated as an act of mercy, will **human legislation** be better than divine mercy?
- If Allah **withheld** legal obligation to relieve us, how can man claim the right to impose it?

This would render human beings paralyzed in action—**without guidance, permission, or law**—which is absurd and untenable. Consider the ḥadīth again: "Allah has imposed obligations—do not neglect them. He has set boundaries—do not transgress them. He has forbidden things—do not violate them. And He has remained silent about certain things as a mercy—not due to forgetfulness—so do not pursue them."
The warning is **against probing** such matters, lest they be made burdensome. For example, the man who asked about annual ḥajj nearly caused it to become mandatory yearly. This shows that what is "left out" is **not** a legal gap, but **an intentional mercy**, a deliberate **non-imposition**.

Real-World Examples: Regulation without Legislative Gaps

Take, for instance, the regulation of **traffic laws**. Some claim that Islam has left such matters unaddressed. But the truth is that Islamic law *has* addressed them—**as permitted acts**.
Walking or riding on roads is **inherently permissible**, and public roads are **public property**. The individual is free to walk on the right or left side, to choose one route over another—these are all **originally permitted actions**. This was the **reality at the time of the Prophet ﷺ**, and it was **affirmed by his silence** and his endorsement of customs through legal principles and social norms.
So if the ruler (walī al-amr) later **organizes** these permissible actions—prohibiting some paths and requiring others, such as mandating right-hand traffic—he is within his **legitimate authority**. Islamic law commands **obedience to the ruler**, provided he does not command a sin. Therefore, Islamic legislation already covers the issue by:

1. **Recognizing** the permissibility of using roads.
2. **Authorizing** the ruler to regulate public welfare in permitted domains.

Thus, even such contemporary matters are not outside the scope of sharīʿah. They fall **under its umbrella** by default.

The Claim of "No Text" Is False

People often say, "There is no text regarding this matter." But consider: We are commanded to **follow the Prophet ﷺ**. The Qur'ān says: "Say: If you love Allah, then follow me and Allah will love you." (Āl ʿImrān 3:31). And the Prophet ﷺ speaks **only from revelation**: "Nor does he speak from [his own] desire. It is nothing but revelation sent down to him." (Al-Najm 53:3–4). "Say: I only warn you by revelation." (Al-Anbiyāʾ 21:45). Thus, we are commanded to **follow what is revealed** and implicitly **forbidden from following anything else**. That is, **no ruling** is valid unless derived from revelation. So when someone claims that a particular ruling was *derived without a text*, it means it was **not from revelation**. And if it's not from revelation, it **cannot be valid**, since:

- Revelation is exclusive in legislative authority.
- Human speculation cannot substitute divine command.

- The claim of legislative gaps implies **deficiency in the sharīʿah**, which contradicts:

"We have sent down to you the Book as an explanation for all things." (Al-Naḥl 16:89) "This day I have perfected your religion for you." (Al-Māʾidah 5:3) "Indeed, guidance has become distinct from error." (Al-Baqarah 2:256) "That those who perished [might perish] upon evidence, and those who lived [might live] upon evidence." (Al-Anfāl 8:42)
These verses prove that **no issue** is outside the scope of divine judgment. To suggest otherwise is to imply that divine law is **incomplete** and that revelation failed to guide fully—an unacceptable and **blasphemous** conclusion.

The Role of Revelation as the Sole Lawgiver

Therefore, the **judgment sought** in any matter must be derived from **sharīʿah**, not reason or interests. A legal ruling must:

- Have **a basis in revelation**,
- Be sourced **from God**,
- Be understood as a **divine address concerning human action**,
- Not be derived from **human intellect, desires, or pragmatic goals**.

Anything lacking this divine source **is not a legal ruling** in Islam. "Say: I only warn you by revelation." (Al-Anbiyāʾ 21:45)
This is a **restrictive clause** (ḥaṣr), meaning: no warning, no judgment, no legislation—except by revelation.
"Follow what has been sent down to you from your Lord, and do not follow protectors besides Him. Little do you remember." (Al-Aʿrāf 7:3).
This verse provides both an **affirmative command** and a **prohibitive clause**:

- **"Follow what has been revealed"** – the all-inclusive directive.
- **"Do not follow others besides Him"** – the complete bar on alternative sources.

This **excludes** following the opinions of men, the legislation of humans, and all secular or man-made systems. Every legitimate legal ruling must have **a clear connection to revelation**.
"Judgment belongs only to Allah. He has commanded that you worship none but Him. That is the upright religion, but most people do not know." (Yūsuf 12:40). "Indeed, We have sent down to you the Book in truth, so that you may judge between people by what Allah has shown you." (Al-Nisāʾ 4:105). "And We revealed to you the Book in truth, confirming what came before it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed." (Al-Māʾidah 5:48). These verses establish that **judgment must be based solely on revelation**. The divine message is sufficient and complete. There is **no room** for ruling by anything other than what Allah has revealed.

Rebutting the Claim of a Legislative Void (Farāgh Tashrīʿī)

Let us revisit a critical question: What is the Islamic position when we face situations in life where no **explicit ruling**—neither of prohibition nor of permission—is mentioned in the Qur'ān or Sunnah?
Some jurists describe such cases as **areas of "silence" (ʿafw)**, meaning God did not legislate about them to **ease the burden** on the Ummah, not because He forgot or neglected them. As the Prophet ﷺ said: **"What Allah made lawful in His Book is lawful, what He prohibited is prohibited, and what He remained silent about is pardoned, so accept His pardon."** (Narrated by al-Tirmidhī, Ibn Mājah, and al-Bazzār). In another narration:
"Allah has laid down obligations, so do not neglect them; He has set boundaries, so do not overstep them; He has forbidden things, so do not violate them; and He has remained silent about other things as a mercy to you—not out of forgetfulness—so do not search for them." (Narrated by al-Bayhaqī and Abū Thalabah)
These reports, while aḥād (non-mutawātir), are consistent in their meaning and **do not conflict with the Qur'ān**. They do not indicate that God **left out rulings** from His law but rather that He **deliberately permitted** certain matters.
So the "silence" in these ḥadīths is not legislative **neglect**, but an **intentional withholding of prohibition**. It is not a **vacuum**, but a **form of legal ease**.

No Room for Human Legislation in the Name of "Reason"

Now let's ask: If something was **left unregulated** by divine command **as a form of mercy**, not requiring prohibition or obligation, then what gives *humans* the right to come and legislate over it?
To say that we must fill this so-called "gap" through reason is to claim that **human minds can legislate better** than divine mercy. That is a **reversal of divine authority**.

In fact, if there were no revelation and no authorization for reason to legislate, then man would be **incapable of acting**—there would be no divine instruction to follow, no justification for behavior, and no accountability.
But this is **logically impossible**, for human life requires action. Hence, the divine law does not leave us abandoned (sudā), as made clear in: **"Does man think he will be left neglected (sudā)?"** (Al-Qiyāmah 75:36)
This means: there is **no legislative vacuum**. The law **covers all matters**, either explicitly or implicitly, directly or by general principles.

An Analogy: Asking Unnecessary Questions Leads to Hardship

Remember the man who asked the Prophet ﷺ: **"O Messenger of Allah, must we perform Hajj every year?"**
The Prophet ﷺ **remained silent** the first two times. When the man asked a third time, the Prophet ﷺ said:
"Had I said 'yes,' it would have become obligatory—and you would not have been able to bear it... Leave me so long as I leave you. Verily, those before you were destroyed by their excessive questioning and opposition to their prophets." (Ṣaḥīḥ Muslim). This narration links directly to the verse:
"O you who believe, do not ask about things which, if made apparent to you, will distress you." (Al-Māʾidah 5:101). So the **silence** in such cases was an act of **divine leniency**. It **did not signify** legislative absence. Rather, it meant:

- The matter was **left permissible** (mubāḥ)
- Or the **time for legislation had not yet arrived** (as in the case of intoxicants)
- Or the Prophet ﷺ was **protecting the Ummah from unnecessary hardship**

Example: The Practice of ʿAzl (Withdrawal) and Other Acts

Jābir said: "We used to practice ʿazl (coitus interruptus) during the time when the Qur'ān was being revealed, and the Prophet ﷺ did not forbid us." (Ṣaḥīḥ al-Bukhārī). This shows that actions not expressly regulated were **not forbidden**—not because they lacked legal status, but because the law **granted latitude**. This is not a "legislative gap." Rather, it is **permissibility by default (al-aṣl al-ibāḥah)**. So to claim there exists a legislative vacuum that needs to be "filled" by human reason is to ignore the nature of **tashrīʿ** (divine legislation): Everything either has a ruling of **obligation**, **prohibition**, **recommendation**, **discouragement**, or **permissibility**. There is no "sixth" category called **no ruling**.

Secular Legal Reasoning as a Trojan Horse: The Maslahah Trap

Some claim that when a matter has **no specific ruling**, it may be governed by **al-maṣlaḥah al-mursalah** (unrestricted public interest). They argue that if a text has not directly validated or negated a matter, human judgment based on benefit can legislate it.
But this approach carries a **dangerous reversal**: It places human interests above divine revelation, assuming that our **limited perception** of benefit or harm can substitute for Allah's all-encompassing knowledge. This contradicts the clear Qur'ānic declarations: **"This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as your religion."** (Al-Māʾidah 5:3). **"We have sent down to you the Book as clarification for all things."** (Al-Naḥl 16:89). So there can be **no valid appeal to benefit (maṣlaḥah)** unless:

1. It is **recognized by revelation** (shahida lahu al-sharʿu bil-iʿtibār)
2. It does not **contradict a revealed ruling**
3. It is **applied within the boundaries of the Sharīʿah**

Thus, there is no such thing as a "legislative vacuum" to be filled with **rationalist** or **utilitarian** lawmaking. Legislating based on speculative benefit is itself a **rejection of divine legislation**.

The Qur'ānic Imperative: Law Belongs to God Alone

This point is repeatedly emphasized in the Qur'ān with unambiguous, exclusive language: **"Judgment belongs only to Allah."** (Yūsuf 12:40). **"Follow what has been revealed to you from your Lord, and do not follow other guardians besides Him."** (Al-Aʿrāf 7:3). **"And We have revealed to you the Book in truth so that you may judge between people by what Allah has shown you."** (Al-Nisāʾ 4:105). **"So judge between them by what Allah has revealed, and do not follow their vain desires."** (Al-Māʾidah 5:48). These verses **categorically negate** the authority of any source

other than revelation as a basis for law. They reject human opinions, secular legislation, and rationalist constructs as **illegitimate replacements**.

Final Refutation: If Revelation Is Sufficient, There Is No Gap

The idea of legislative gaps implies that:

- Islam is **incomplete**
- Revelation is **insufficient**
- The Prophet ﷺ **failed to clarify** everything necessary
- People have **legal obligations** without divine instruction

Each of these implications is **contradicted** by divine text: **"So that he who perishes may perish upon clear proof, and he who lives may live upon clear proof."** (Al-Anfāl 8:42). **"Indeed, We have explained in detail for the people every kind of example."** (Al-Kahf 18:54). **"Indeed, the truth has become distinct from error."** (Al-Baqarah 2:256)
If something is **not regulated** by revelation, then it is:

- **Permissible by default**
- Or **awaiting contextual ijtihād** from qualified scholars using **recognized usūl**
- Or **deliberately unlegislated** as a mercy, not as a deficiency

But it is never, under any circumstances, a **vacuum to be filled by secular law or reason-based legislation**.

Conclusion: Revelation Is the Sole Source of Law

The Prophet ﷺ said: **"I only warn you by the revelation."** (Al-Anbiyāʾ 21:45), The Qur'ān says: **"Follow what was revealed to you from your Lord, and do not follow other protectors besides Him."** (Al-Aʿrāf 7:3), Thus, the source of all legal rulings is **what has been revealed**—not what is invented by legislators, parliaments, or intellectual elites. There is no "empty space" in divine law. There is no "authority" outside revelation. There is no "need" for external legislation.

- **Islam is complete. Sharīʿah is preserved. And all rulings must trace back to revelation. Permissible by default**
- Or **awaiting contextual ijtihād** from qualified scholars using **recognized usūl**
- Or **deliberately unlegislated** as a mercy, not as a deficiency

But it is never, under any circumstances, a vacuum to be filled by secular law or reason-based legislation.

Chapter Two: A Critique of Maṣlaḥah Mursalah and the Distinction Between Sharīʿah-Recognized Appropriateness and Modern Rationalist Utility

Executive Summary:

The Status of Reason in the Islamic Worldview and the Boundaries of Its Use

This chapter addresses one of the most contentious and misrepresented topics in contemporary Islamic thought: the role of reason (*ʿaql*)—its place, function, and boundaries. It clarifies that Islam neither marginalizes reason, as do some insular religious trends, nor elevates it above revelation, as do many modern rationalist schools. Instead, Islam grants reason its rightful status: a tool for understanding revelation—not an independent source of legislation.

The chapter elaborates on the crucial distinction between "reason guided and corrected by revelation" and "autonomous reason emancipated from revelation." It emphasizes that the former represents the path of established legal theorists (*uṣūliyyūn*), while the latter lies at the heart of deviations espoused by theological sects and modern rationalist movements. Through historical examples drawn from Islamic theology, philosophy, and jurisprudence, the author shows how prioritizing reason over revelation has led to grave distortions in both belief and law.

The chapter also engages with prominent objections raised in the name of reason against specific Islamic rulings. It demonstrates that these critiques often stem not from sound reasoning, but from flawed premises and concepts imported from Western secular civilization. The text thoroughly critiques the assumptions of contemporary Western rationalism, particularly its presumption that reason is completely autonomous from revelation—an idea the chapter deconstructs by highlighting the limits of human perception and cognition.

The chapter concludes by outlining the legitimate conditions for the use of reason in Islam: submission to revealed text, acknowledgment of human cognitive limitations, and the prohibition against opposing definitive scriptural texts with speculative rational arguments. It affirms that every doctrinal or legislative deviation begins when reason is prioritized over revelation or when the scriptural text is subordinated to what the intellect deems a "benefit" (*maṣlaḥah*).

The Nature of Maslahah Mursalah and Its Criteria According to the Legal Theorists

Definition of *Maslahah* and Its Distinction from Utility

Linguistic Definitions of Maslahah: In *Lisān al-ʿArab* (entry: Ṣ-L-Ḥ): "Ṣalāḥ (righteousness) is the opposite of corruption. It is said: something ṣalaḥa (was rectified), yaṣluḥu (is rectifying), it is ṣāliḥ (sound)... and *maṣlaḥah* is that which brings rectitude and benefit to people." In *Al-Qāmūs al-Muḥīṭ* by al-Fīrūzābādī: "Ṣāliḥ is the opposite of corrupt. *Maṣlaḥah* is that which rectifies a person's condition or organizes his affairs." In *Tāj al-ʿArūs* by al-Zabīdī: "Maṣlaḥah is that which brings rectitude, or that which leads to rectitude, or that which benefits people." In *Al-Muʿjam al-Wasīṭ*: "Maṣlaḥah is that which brings goodness, benefit, or safety to individuals or society. Plural: *maṣāliḥ*."

As for the relationship between *maṣlaḥah* and *manfaʿah* (utility), the legal theorists expressed it thus: "A *maṣlaḥah* is something accompanied by goodness in both its ends and means, while *manfaʿah* may merely be a desire, whim, or exploitation." For instance, *ribā* (usury) provides an immediate financial benefit, but it is not a *maṣlaḥah* because it leads to corruption. Hence, Islam harshly prohibited it, stating explicitly: "Allah has permitted trade and forbidden usury." (2:275) It is even described by Allah as a deed of Satan.

In fact, many modern economic systems have institutionalized ribā under the guise of rational interest and maṣlaḥah, framing it as the foundation of development and finance. Banks and global institutions were built upon it, laws were codified to protect it, and people were encouraged to borrow based on it—while many found no problem with it intellectually. Yet the Sharīʿah judges it as profound corruption, proving that recognizing something as a maṣlaḥah cannot rely on unaided reason but must be weighed on the scale of revelation.

Another example is gambling and sports betting. Many justify these as forms of entertainment or economic stimulation—particularly in gaming and sports sectors. Yet the Sharīʿah considers them grave corruption and labels them filth: "Intoxicants and gambling... are abominations of Satan's work." (5:90).

Pornography distribution is defended by some as a form of "personal freedom" or "economic benefit" based on supply and demand. Some countries even legislate protections for it. Yet in Sharīʿah, it is a severe crime: "Indeed, those who love that immorality be spread among the believers—for them is a painful punishment." (24:19)

Profiting from monopolies may appear as an economic advantage to traders, but in Sharīʿah it is a sin that causes widespread harm to the poor and disrupts market balance. The Prophet ﷺ said: "Whoever hoards is sinful."

Surrogacy and tampering with lineage may be viewed as compassionate medical solutions for infertility or income sources for poor women. But in Islamic law, they are severe corruptions: "Call them by [the names of] their fathers; that is more just in the sight of Allah." (33:5).

Extramarital relationships are deemed psychological necessities or personal rights in Western systems. But Islam sees them as moral corruption, undermining the family structure, promoting fornication, and destabilizing lineage. Hence, the Sharīʿah forbids them and classifies *zinā* as a major sin: "Do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way." (17:32).

Euthanasia is sometimes proposed as a compassionate interest to ease suffering or as an individual's right to end their life. But Islamic law regards it as aggression against the soul, a breach of servitude, and a transgression against God's exclusive right over life and death: "Do not kill the soul which Allah has forbidden—except by right." (6:151)

Gender reassignment and manipulation of sexual identity are sometimes labeled psychological interests. Yet in Sharīʿah, they are violations of the innate nature (fiṭrah): "The natural disposition Allah instilled in mankind." (30:30) The Prophet ﷺ warned: "Cursed are the men who imitate women and the women who imitate men."

Dear reader, when you encounter these examples, you might naturally recoil, since your mind operates through Islamic values that frame these actions as devoid of *maṣlaḥah*. But when abstract reason is invoked in legislative discourse, independent from Sharīʿah, many minds accept these acts and even legislate protections for them. Be careful, then, not to fall into the methodological error of concluding: "This proves that reason can determine *maṣlaḥah*."

What's happening is that your intellect—already formed by Islamic principles—is judging these acts as corrupt. This does not validate rational autonomy in legislation but shows the influence of revealed norms on your perception.

Thus, linguistically, *maṣlaḥah* refers to that which brings order, goodness, and uprightness. It overlaps with *manfaʿah* but is broader and more elevated. *Maṣlaḥah* involves moral, rational, and systemic assessment of outcomes, whereas *manfaʿah* may be pursued even at the cost of truth. It may seek benefit, profit, pleasure, or desire—yet still lead to corruption. We conclude: Something is called a *maṣlaḥah* only after the Sharīʿah judges it so. And that label is nullified once Sharīʿah judges the act to be corrupt. Ribā may seem economically beneficial to some minds or advantageous to certain groups—but Sharīʿah exposes its corruption and removes it from the sphere of *maṣāliḥ*, regardless of its superficial benefit.

Imām al-Shāṭibī said: "*Maṣāliḥ* are only considered insofar as they align with the structure of the Sharīʿah—not simply because they provide pleasure or utility. Pleasure may lead to corruption, and benefit may result in harm. The Sharīʿah was not legislated to secure pleasure, but to secure true *maṣāliḥ*, which uphold human life."

Al-Shāṭibī further explains: "Not everything that people deem a *maṣlaḥah* is considered a Sharīʿah-recognized *maṣlaḥah*. The Sharīʿah evaluates *maṣāliḥ* and *mafāsid* based on their true nature and their alignment with the objectives of preserving religion, life, intellect, lineage, and wealth." (*Al-Muwāfaqāt*, vol. 1, p. 36, ed. Mashhūr Āl Salmān).

Shaykh Muṣṭafā al-Zarqā defined the legitimate *maṣlaḥah* as: "That which preserves the intent of the Lawgiver. It is not merely the realization of any benefit, but rather one disciplined by values and standards established by revelation." (*Al-Madkhal al-Fiqhī al-ʿĀmm*, vol. 2, p. 891)

Taqī al-Dīn al-Nabhānī, in *Al-Shakhṣiyyah al-Islāmiyyah*, distinguishes *maṣlaḥah* from *manfaʿah* in another way: "Utility (*manfaʿah*) may be illusory or temporary. But the *maṣlaḥah* that counts in Sharīʿah is that which realizes the Lawgiver's aim—not what man deems good by mere reason or desire." (vol. 3, pp. 320–322)

Comment: *Maṣlaḥah* is defined by its righteousness in the scale of Sharīʿah—not merely in accordance with taste or preference. It is assessed within a framework of legislation—not apart from it.

What Did Ibn al-Qayyim Say in *Iʿlām al-Muwaqqiʿīn*?

One often-quoted statement is:

"Sharīʿah is founded entirely upon wisdom and the interests of people in this life and the next. It is all justice, all mercy, all benefit. Any matter that departs from justice to injustice, from mercy to cruelty, from benefit to harm—is not part of the Sharīʿah." (*Iʿlām al-Muwaqqiʿīn*, vol. 3, p. 11)

This statement has been criticized as implying that *maṣlaḥah* is the standard, not revelation. But this misreads Ibn al-Qayyim. He did not mean that unaided reason identifies justice or *maṣlaḥah*. Rather, as he clarifies elsewhere:

"Reason cannot independently perceive detailed *maṣāliḥ* and *mafāsid*; only general outlines. As for specifics, they are known only through Sharīʿah." (*Iʿlām al-Muwaqqiʿīn*, vol. 1, p. 69)

And: "The Sharīʿah never brings what reason declares impossible—it brings what reason finds wondrous." (*Miftāḥ Dār al-Saʿādah*, vol. 2, p. 53), So Ibn al-Qayyim insists: *Sharīʿah defines justice and benefit*, not reason.

Al-Shāṭibī likewise warned: "It is not permissible for *maṣlaḥah* to be purely rational. Reason cannot encompass the Lawgiver's objectives. The legitimate *maṣlaḥah* is that which the Sharīʿah has indicated." (*Al-Muwāfaqāt*, vol. 2, pp. 9–10), Al-Qarāfī, in *Nafāʾis al-Uṣūl*, also differentiates real from imagined *maṣāliḥ*: "Any rationally perceived interest unsupported by revealed proof is not legally valid." (*Nafāʾis al-Uṣūl*, manuscript – Dār al-Kutub al-Miṣriyyah).

Organizing the Pursuit of Benefits and the Prevention of Harms

In Islamic jurisprudence and legal theory, maṣlaḥah (benefit) is not understood merely as "whatever brings direct advantage to the individual." Rather, it is viewed as a holistic system that encompasses legitimate benefits, regulates them, considers their long-term consequences, and avoids conflicts between individual and collective interests. Thus, maṣlaḥah is not limited to immediate utility, but includes:

1. **Balance among benefits** – e.g., prioritizing public interest over private, or avoiding a greater harm over achieving a lesser benefit.
2. **Consideration of outcome and permanence** – maṣlaḥah is evaluated by its consequences, not just its immediate results.
3. **Guiding ethical values** – not every utility qualifies as a maṣlaḥah unless regulated by Sharia values such as justice, mercy, and human dignity.

Section: The Sharīʿah Standard for Recognizing Maṣlaḥah and the Limits of Reason in Ijtihād

It is among God's wise arrangements that He embedded within the human being – as a social creature – energetic faculties represented in needs and instincts that demand fulfillment and regulation. He honored him with reason as a tool for understanding and reflection, not as an independent source of legislation. The need for food, for example, drives a person to seek work, ownership, or exchange – all of which require regulation. Similarly, the reproductive instinct prompts marriage, which calls for rulings governing the male-female relationship, lineage, dowry, guardianship, etc. Though the intellect facilitates comprehension of these relations, it does not independently legislate them, but rather receives rulings from revelation and interprets them.

Thus, human relations must be governed by legislation that ensures the attainment of benefits and the prevention of harms – not left to chaos in which each individual seeks their own interests by personal whims, leading to corruption. If, for instance, people were left to set the standards of trade and profit, some might believe commercial fraud or usury ensures short-term gains. Yet such practices breed systemic economic corruption and oppression, as is evident in capitalist economies.

While some jurists categorize rulings related to social and individual conduct under three types – ḍarūriyyāt (necessities, e.g., preserving life by prohibiting murder), ḥājiyyāt (needs, e.g., permitting travel for trade), and taḥsīniyyāt (embellishments, e.g., using polite language and avoiding impurities) – this classification does not encompass all of Sharīʿah. There exist rulings related to pure devotion, trials and tests, moral training, and submission to divine authority that are not built upon benefits or harms at all. Acts such as the number and timing of prayers, the

fast from dawn to sunset, the rituals of pilgrimage, and the mandated waiting period for widows all require pure compliance, even if their wisdom is not apparent or mentally fathomable.
Also, public interests may conflict with individual benefits. For example, the prohibition of hoarding serves societal welfare, even if the merchant sees personal gain in it. Likewise, bribery may offer advantages to specific parties but is outlawed for its societal harm.
A truthful merchant may expose product defects and lose money, the usurer is denied guaranteed returns – all indicating that public maṣlaḥah takes precedence over private interest. Thus, reason cannot independently determine what is beneficial – that judgment lies with the Sharīʿah.
Moreover, regulation of instincts demands prioritizing moral and devotional values over material interest – as when a believer avoids false oaths or dishonesty for worldly gain.
Given the multiplicity of benefits and the need to prioritize them, how can the intellect on its own define a comprehensive framework of maṣlaḥah to apply in new contexts? It lacks the capacity to reconcile the complex interplay of societal variables. For instance, how can it judge between the parental instinct for compassion and the requirement for justice in testifying against one's child? Or between spiritual benefit in night prayer and physical rest? Or regulate marital issues like divorce without divine guidance?
Hence, it is vital to distinguish between **regulation (tanẓīm)** and **rational justification (taʿlīl)**. Many rulings are divine arrangements of life, not necessarily grounded in deduced rationales. Most rulings lack explicit rationalization and must be obeyed unconditionally. Even when wisdoms or purposes are identified, they remain subordinate to revealed standards.

Broader Aims of Sharīʿah Beyond Maṣlaḥah

From the standpoint of aims (maqāṣid) and legislative purposes, the Sharīʿah includes:

1. **Functional organizational goals** – relating to human needs and relations:
    - Necessities (ḍarūriyyāt): religion, life, intellect, progeny, and wealth.
    - Needs (ḥājiyyāt): removing hardship.
    - Embellishments (taḥsīniyyāt): dignity and etiquette. These are structures for life, not always the motivating causes behind legislation unless specified.
2. **Devotional and obligatory purposes**: Submitting to divine command, not personal utility. It is not for a believing man or woman, when Allah and His Messenger have decided a matter, to have any choice about their decision…
3. **Moral and spiritual purification**: He purifies them and teaches them the Book and Wisdom.
4. **Trial and differentiation**: And We will surely test you…
5. **Eschatological (afterlife-related) aims** e.g., praying or giving charity for the deceased.
6. **Identity-defining and distinguishing aims**: e.g., distinguishing Muslim practices from others.

Hence, understanding Sharīʿah must adopt a **comprehensive analytical approach** – not reduce it to utilitarian aims. The human being is not just a body, and Sharīʿah is not merely a worldly legal code, but a divine system that purifies, tests, reforms, and guides. Reducing it to a tool for achieving interests risks emptying it of its essence as a system of obligation and submission and risks conditional compliance based on perceived benefit.

First: Maṣlaḥah and the Social Necessity of Regulation

Society is not maintained by individuals chasing personal interests, but by a unified structure that prioritizes collective benefit over individual desire and enshrines justice above chaotic competition. If every person pursued only what they considered beneficial, unregulated by a shared system, conflict would prevail.
The book *The Miracle of Islamic Legislation: Characteristics and Foundations* points to this by stating: "Society cannot be upright if each individual merely seeks personal interests; rather, they must unite upon an accepted system that advances the group's interest over the individual's, with individuals conceding to the needs of society." Hence, the need for divine legislation.

Second: Reason as a Servant of Revelation, Not an Independent Legislator

Reason is a means of understanding and inference, not a source of legislation. The usūl scholars differentiate between reason's ability to comprehend the suitability of certain rulings and its inability to independently legislate based on presumed benefits.

The Qur'ān says: ﴿Say: I only follow what is revealed to me from my Lord﴾ [al-Aʿrāf: 203], clearly affirming that the source of legislation is restricted to revelation, and reason's role is in interpretation and deduction, not origination.

Taqī al-Dīn al-Nabhānī affirms: "The understanding of rulings by a mujtahid must be based on revelation, not mere opinion or desire. If a ruling is deduced solely from perceived benefit without supporting evidence, the person has made their opinion a source of legislation – which is prohibited." (*The Islamic Personality*, vol. 3)

Third: The Arguments of Those Who Claim that Sharīʿah Aims to Bring About Benefits and Prevent Harms

1. **Classification of Benefits into Levels**:
    - **Essential (ḍarūrīyyāt)**: e.g., preservation of religion, life, intellect, lineage, and property.
    - **Non-original essentials**: e.g., prohibition of even small amounts of intoxicants.
    - **Primary needs (ḥājiyyāt)**: e.g., marriage of a minor by the guardian.
    - **Non-original needs**: e.g., consideration of social parity in marriage.
    - **Embellishments (taḥsīniyyāt)**: e.g., denying legal competence to slaves in giving testimony.

From these they infer that these interests are the *causes (ʻilal)* behind all legislation.

2. **Evidence from the Qur'an and Sunnah**:
    - ﴿And We have not sent you, [O Muhammad], except as a mercy to the worlds﴾.
    - ﴿My mercy encompasses all things﴾.
    - The ḥadīth: *"There shall be neither harm nor reciprocating harm."*
3. **Claim of Consensus (Ijmāʿ)**:
    - They claim that scholars unanimously agree that God's rulings all have underlying wisdom and objectives.
4. **Inductive Survey of Sharīʿah**:
    - They argue that a comprehensive survey of Sharīʿah shows that its details revolve around realizing benefits and avoiding harms, especially with regard to the three well-known categories: necessities, needs, and embellishments.
5. **Claim that in Customs (ʿĀdāt), Meanings Matter**:
    - They maintain that in areas of customs and transactions, rulings fluctuate with perceived benefits and harms. They cite ﴿And for you in legal retribution is [the preservation of] life﴾.
6. **Using Maṣlaḥah When No Text Exists**:
    - In the absence of a text, they argue that rulings may be built on maṣlaḥah, if supported by comprehensive inductive reasoning or reason enlightened by the objectives of Sharīʿah.

Fourth: Refutation by Taqī al-Dīn al-Nabhānī of These Arguments

1. **Invalidity of Using Maṣlaḥah as a Legal Cause Based on Reason Alone**:
    - The fact that God is Wise and Just does not justify deriving legal causes based on benefit:
        - This pertains to *kalām* (theology), not to *uṣūl al-fiqh*.
        - Belief in God's justice does not entail identifying the legal reasons for His rulings.
        - A valid legal cause (ʻillah) must be deduced from revelation, not from divine attributes.
2. **Invalid Use of the Qur'anic Verses and Ḥadīths**:
    - The cited verses refer to **goals or outcomes**, not to **legal causes**:
        - A *cause* precedes the legislation and is intrinsically linked to the ruling.
        - A *goal* is a result that follows implementation.
        - Example: ﴿We have not sent you except as a mercy describes﴾ the result, not the reason for sending the Prophet.
        - The ḥadīth *"no harm"* negates harm but does not affirm a specific benefit as a legal basis.
        - There is no genuine *causal* wording in these texts (e.g., "in order to," "because," "so that").
3. **Refutation of the Consensus Claim**:
    - Only the consensus of the Companions is binding.

- Claiming consensus on the existence of divine wisdom behind rulings does not establish that such wisdom is the *cause* of the ruling in the technical legal sense.

4. **Distinction Between Outcome and Legal Cause**:
   - Realizing benefits and preventing harms is often a **result** of legislation, not its **motivating cause**.
   - A legal cause (ʻillah) must be a specific indicator tied to the ruling in the text, e.g. ﴿So that it will not circulate only among the rich among you.﴾
5. **Invalidity of General Induction**:
   - The Sharīʿah contains both rulings with known causes and those without.
   - Not all legal causes mentioned in the texts refer to maṣlaḥah; many pertain to particular meanings (e.g., distraction from Friday prayer, or disbelief preventing inheritance).
   - Calling all of these "maṣlaḥah" is a human judgment, not a textual statement.
6. **Critique of Using Non-Textual Maṣlaḥah as Evidence**:
   - Using unverified benefits as independent legal proofs allows reason to dominate legislation, which contradicts the principle that legal evidence must be textual.
   - The intellect cannot assign or define legal causes in the absence of scriptural evidence.
7. **Undermining the Classification of Maṣlaḥah (Necessities, Needs, Embellishments)**:
   - This framework lacks textual precision:
     - The "five necessities" are not exhaustive others exist (e.g., preservation of the state or security).
     - Even these are interpreted differently across cultures and religions. For example, Christians may not view wine as harmful to intellect.
8. **Difference Between a Legal Cause and a Benefit**:
   - A legal cause: explicitly indicated by the text with a causal phrasing.
   - A benefit: a real-world observation that may or may not exist and has no direct impact on the ruling.
     - Example: The prohibition of exchanging fresh dates for dried ones is due to the loss in weight when drying, not a generic financial harm.
9. **Prohibition on Using Outcomes to Deduce Rulings**:
   - What follows from a ruling's application is not part of the ruling's structure or evidence.
   - Even if an outcome is beneficial, it does not constitute the legal rationale (ʻillah) for the ruling.

Fifth: Methodological Summary According to Taqī al-Dīn al-Nabhānī:

Nabhānī's Conceptual Framework on Maṣlaḥah (Benefit)
What He Affirms:

- That the Sharīʿah indeed brings about praiseworthy outcomes: namely, the realization of benefits and the prevention of harms.
- That a legal cause (ʿillah) in Sharīʿah is only that which has been explicitly stipulated by the divine texts or supported by evidence implying causality.
- That textual interpretation must follow the legislative meaning established by revelation—not merely the perceptible benefit or harm as grasped by the senses or empirical reality.

What He Rejects:

- That benefit—as rationally or empirically conceived—can constitute a legislative cause in itself or serve as the primary driver behind legislation.
- That rulings can be constructed upon presumed benefits for which there exists no supporting textual basis.
- That outcomes or consequences form part of the essential structure of a ruling, its indication, or its causality.

The Criterion for Causation is the "Appropriate Effective Cause", Not Abstract Rational Speculation
A legally valid cause (ʿillah) must be:

- Intelligible (mufhim),
- Apparent (ẓāhir),
- Precisely defined (munḍabiṭ),
- And causally effective (muʾaththir) in the ruling.

Uṣūl scholars have laid down exacting criteria for valid causes to prevent unrestrained rationalization and to safeguard against the intrusion of personal whim (hawā) into legislation.

As al-Āmidī explains: “The appropriate cause (munāsib) is an apparent, regulated attribute, such that linking the ruling to it leads to the realization of what is suitable to be intended by the lawgiver.” *(cf. Maṣāliḥ Mursalah by Maḥmūd Fāʿūr)* Similarly, ʿAlī al-Shāshī says: “If we see someone giving a poor man a dirham, it is overwhelmingly probable that the giving is motivated by the poor man's need and the desire for reward—thus making the attribute (relieving need) an appropriate and causally effective basis.” *(ibid.)*

Sixth: Reason Understands Texts—It Does Not Generate Them

The Lawgiver assigns causes (ʿilal) for rulings through textual indicators. The role of reason is to understand and reflect within the framework of these texts—not to legislate from outside them. Shaykh ʿAṭāʾ Abū al-Rishta summarizes this principle as follows: “An intelligible, appropriate attribute is one that bears a causally effective relation to the ruling it underlies. In such a case, it may serve as an inferred legal cause—such as anger in the case of a judge, or murder in matters of inheritance.”

Methodological Summary:

- The Sharīʿah was revealed to regulate human benefit according to **God’s will**, not **human reasoning**.
- Reason is a **tool for understanding and deduction**, not a source of legislation.
- Benefits are to be **derived from texts**, not invented by the jurist.
- A valid legal cause must be an **intelligible, appropriate, and causally effective attribute**, understood from the text.
- Rational deduction in jurisprudence must never exceed the **boundaries of revelation** or its methodological principles.
- All avenues that allow **personal desire** (hawā) to dominate the legislative process in the name of "benefit" must be firmly closed.

Thus, **ijtihād (independent legal reasoning)** becomes a disciplined legal process, preserving Sharīʿah from distortion and ensuring that reason plays its legitimate role without becoming a tyrant over revelation.

Definition of Maṣlaḥah Mursalah

Linguistically, *maṣlaḥah* (benefit) is derived from the root *ṣ-l-ḥ*, meaning advantage, welfare, or that which brings good. The term "maṣlaḥah mursalah" refers specifically to a **perceived benefit** that is **not explicitly affirmed** nor **negated** by a particular text.

Uṣūl scholars define *maṣlaḥah mursalah* as: “Any benefit for which there is no specific textual proof establishing its recognition or invalidation, yet which aligns in itself with the general objectives (maqāṣid) of the Sharīʿah.”

The term *mursalah* (literally: unbound, let loose) denotes that such a benefit is not tied to a specific legal text. However, this does **not** imply that it is entirely disconnected from Sharīʿah; it may be supported by **general principles** or **overarching legal maxims**.

Illustrative Examples:

- **Compilation of the Qur’ān during Abū Bakr’s era**, after many of the ḥuffāẓ (memorizers) had been martyred. This was an evident maṣlaḥah (i.e., preserving the Qur’ān from loss), even though the Prophet ﷺ did not command it during his lifetime. It had no direct textual basis, but was consistent with the higher objective of **preserving religion**.
- **ʿUmar ibn al-Khaṭṭāb’s establishment of the dīwān (register of soldiers)** and allocation of stipends. This was an administrative reform aimed at ensuring justice and distribution of rights, even though it lacked a specific text. It aligned with the Sharīʿah’s overarching principles of **justice, organization, and fulfilling rights**.

Conclusion:

A *maṣlaḥah mursalah* is valid **only** when it conforms to the **spirit and higher objectives of Sharīʿah**. It must not be a speculative or illusory benefit, nor may it **contradict an existing textual ruling**.

The Mālekī Methodology on Derivation Without Explicit Evidence

It must be observed that Imām Mālek and his foremost students—operating prior to the codification of the science of legal theory (uṣūl al-fiqh)—derived legal rulings without explicitly articulating their methods of ijtihād. The term *maṣlaḥah mursalah* and its detailed conceptual framework were in fact coined later by Imām al-Juwaynī and his student Imām al-Ghazālī, both of whom were Shāfiʿī jurists. Notably, al-Ghazālī eventually critiqued and revised his earlier views on the concept, and there is no record that Imām Mālek himself ever adopted the doctrine of maṣlaḥah mursalah in this technical sense.

Clarifying this issue requires precision. For example, some scholars define *maṣlaḥah mursalah* as follows:

"This kind of benefit is not one that the Sharīʿah has remained silent about. Rather, it is a benefit affirmed by the Sharīʿah through a constellation of general texts and principles. The term *maṣlaḥah mursalah* was introduced by uṣūl writers merely as a terminological device to distinguish unanchored reasoning (istidlāl mursal) from analogical reasoning (qiyās)."

This contrasts with other definitions that treat such benefits as being detached from any specific legal evidence.

The first indication of the notion of unanchored reasoning (*istidlāl mursal*) appeared in Imām al-Juwaynī's book *al-Burhān*, in which he employed expressions like *istiṣlāḥ* (seeking benefit), *ra'y mursal* (unrestricted opinion), and *maʿānī mursalah* (unanchored meanings), without using the direct expression *maṣlaḥah mursalah*.

It was Imām al-Ghazālī (d. 505 AH) who first explicitly formulated the term *maṣlaḥah mursalah* and integrated it into the discourse on unrestricted inference (*istidlāl mursal*) in his works *al-Mankhūl* and *al-Mustaṣfā*. He defined it as: a type of benefit not addressed explicitly in the sources—neither affirmed nor negated by name—but which aligns with the higher objectives of the Sharīʿah and requires the jurist's reflection.

However, al-Ghazālī did not leave the matter open-ended. He required such reasoning to be bound by legal constraints. He clarified that if a definitive legal proof exists (from text, consensus, or sound analogy), then it must be given precedence over any assumed benefit. He discussed *maṣlaḥah mursalah* under the broader category of *istiṣlāḥ* in the chapter on "illusory proofs" (*al-adillah al-mawhūmah*).

Although al-Juwaynī incorrectly attributed this doctrine to Imām Mālek, there is no evidence that Mālek ever used the term or explicitly endorsed the doctrine. In fact, none of the Mālekī scholars prior to Ibn al-ʿArabī (d. 543 AH) are known to have mentioned *maṣlaḥah mursalah* in their legal theory. Even Ibn al-ʿArabī, in his legal theory compendium *al-Maḥṣūl fī Uṣūl al-Fiqh*, does not mention the term, although he does reference in other works that *maṣlaḥah* constitutes a basis for ijtihād in Mālek's school.

Likewise, Abū al-Walīd al-Bājī al-Mālekī (d. 474 AH), in his work *Iḥkām al-Fuṣūl fī Aḥkām al-Uṣūl*, does not mention the doctrine of *maṣlaḥah mursalah*. It appears only later in the writings of some Mālekī and Ḥanbalī scholars through expressions like *istiḥsān* (juridical preference) and *qiyās mursal* (unanchored analogy)—formulations that represent later expansions likely influenced by the thought of al-Juwaynī and al-Ghazālī.

Conclusion:

The term *maṣlaḥah mursalah* is a product of the Juwaynī–Ghazālī school of thought, not an authentic doctrine of the early Mālekī school or the pious predecessors (*al-salaf*). It is essential to recognize that invoking examples such as the compilation of the Qur'ān or reinforcement of legal penalties as evidence of *maṣlaḥah mursalah* in Mālekī jurisprudence reflects a **retroactive imposition of a later conceptual framework** onto earlier scholarly efforts. Such readings often result from **later jurists' ignorance of Mālek's specific evidences** for his rulings, coupled with the fact that Mālek did not always articulate the evidential basis for his ijtihād. Consequently, later scholars presumed that his reasoning was grounded in unanchored benefit.

The Genesis of the Maqāṣid-Based Method and Its Connection to Maṣlaḥah Mursalah

The emergence of the *maqāṣid* (higher objectives) methodology and its implications for deriving legislative purposes arose as a **novel approach** initiated by al-Juwaynī and later developed by al-Ghazālī. Upon discovering this "treasure" in viewing Sharīʿah through the lens of its overarching objectives, they began to explore its applications—*maṣlaḥah mursalah* being one such result.

However, al-Ghazālī, in *al-Mankhūl*, states:

"The correct position is that *istidlāl mursal* (unanchored inference) in Sharīʿah is inconceivable unless addressed affirmatively or negatively. There is no end to occurrences and interests, but for every conceivable issue, there exists in Sharīʿah a textual proof for either accepting it or rejecting it."

He continues, after classifying types of legal rulings based on their epistemic paths:
"Therefore, every imagined benefit (*maṣlaḥah*) in a case surrounded by conflicting legal principles must either be affirmed or negated by these principles. To assume that such a benefit can proceed unattended—ignored by all legal indicators—is logically impossible."
Thus, Imām al-Ghazālī **denies the possibility that any benefit could lie entirely outside the purview of divine legislation**. According to him, the Sharīʿah **neglects nothing** and has omitted **no matter of relevance**.

The Definition of Ijtihād and Its Epistemic Parameters

Ijtihād is defined as:
"The exertion of utmost intellectual effort to attain preponderant knowledge (ghalabat al-ẓann) regarding a legal ruling from the sharīʿah, in such a way that the jurist feels unable to make any further effort beyond that."
This is achieved by investigating the detailed evidences related to a particular issue through comprehensive consideration of the primary sources: the Qur'an, Sunnah, consensus (*ijmāʿ*), and analogy (*qiyās*).
It can be affirmed that the Mālekī school drew a clear distinction between rulings derived from direct textual evidence—i.e., detailed, specific proofs such as verses, hadiths, Prophetic actions or approvals, and scholarly consensus—and those derived from *maṣlaḥah mursalah*, which are grounded in inductive reasoning from general evidentiary sources, such as maqāṣid (objectives), legal maxims, and the general corpus of texts. The latter were used in situations where no specific textual proof could be found, and thus, these rulings were said to be "sent" (i.e., not directly anchored in text). They are, therefore, not classified as *maṣāliḥ muʿtabarah* (recognized interests) nor as *maṣāliḥ mulghāh* (rejected ones), which are those addressed explicitly by detailed proofs.

First: The Mālekī Distinction Between Specific (Detailed) and General (Holistic) Proofs

The Mālekīs define *maṣlaḥah mursalah* as a benefit not supported by a specific proof (i.e., a direct scriptural text) but rather by holistic evidence, namely, the maqāṣid of Sharīʿah, overarching legal principles, and the general body of revealed texts.

- **Specific (Detailed) Proof**: A direct scriptural reference to a ruling, such as a verse, hadith, or consensus.
- **General (Holistic) Proof**: Derived from cumulative reflection upon Sharīʿah's objectives, maxims, and textual totality.

Imām al-Qarāfī (d. 684 AH) writes:
"Maṣlaḥah mursalah refers to a benefit for which there is no specific foundational text to affirm or negate it, but which is nonetheless supported by the *genre* of Sharīʿah principles. For example, compiling the Qur'an into a single codex had no specific text commanding it, but falls under the general verse: ﴿You are the best nation brought forth for mankind﴾ (Āl ʿImrān: 110), and the Prophetic statement: *'Do not harm and do not reciprocate harm'*—for dispersing the Qur'an would result in harm." (*Anwār al-Burūq fī Anwāʿ al-Furūq*, vol. 4, p. 29), This demonstrates that Mālekīs seek to situate *maṣlaḥah mursalah* within a general Sharīʿah framework, not to rely on an isolated, direct textual proof.

Second: *Maṣlaḥah Mursalah* Is Not Entirely Unaddressed—It Is Recognized Through the Corpus of Texts

As noted above, the Mālekīs assert that *maṣlaḥah mursalah* is not an invented category but rather one **implicitly acknowledged** through inductive reasoning based on the Sharīʿah's textual universe. Ahmad al-Shinqīṭī, in his work *al-Waṣf al-Munāsib li Sharʿ al-Ḥukm*, affirms: "To describe a maṣlaḥah as 'mursalah' is not to deny its recognition in Sharīʿah. It is merely to distinguish it from analogy. In analogy, a specific foundational text affirms a given interest. In *maṣlaḥah mursalah*, the affirmation comes from non-specific, overarching Sharīʿah principles. Therefore, the jurist must prove that the *genre* of this interest is affirmed by Sharīʿah texts—otherwise, it would be mere legislation by desire." (*Chapter 3: On the Evidences for Imām Mālek's Methodology*).
Mālekī scholars have concluded that Imām Mālek only recognized *maṣlaḥah* when its type or category was affirmed by Sharīʿah principles, even if not addressed by a particular proof. This is a critical restriction: not everything perceived as beneficial by the intellect qualifies as a legal interest. Only that which aligns with **comparable** divinely legislated matters qualifies.
Imām al-Shāṭibī (d. 790 AH) comments: "Maṣlaḥah mursalah is only valid when subsumed under a general principle, confirmed through comprehensive inductive reasoning of Sharīʿah proofs. That which accords with Sharīʿah's totality is recognized; that which contradicts it is rejected." (*al-Muwāfaqāt*, vol. 2, p. 286).

Third: The Method of Holistic Induction—The Bridge Between Revelation and Maṣlaḥah

The Mālekī school treats *comprehensive induction* (*istiqrāʾ kāmil*) of Sharīʿah texts as the key epistemological tool linking *maṣlaḥah mursalah* to revelation. This method involves:

1. Compiling all relevant texts concerning a particular legal domain;
2. Deriving the general objective (*maqṣad*) suggested by those texts;
3. Applying that objective to a new case for which no specific textual evidence exists.

Applied Example:

Prohibiting the exchange of paper currency if it leads to usury (*ribā*)—a contemporary issue.

- No direct scriptural text mentions "paper currency," but via inductive reasoning:
    - Sharīʿah prohibits *ribā* in gold and silver: ﴿God has permitted trade but prohibited usury﴾ (al-Baqarah: 275).
    - Legal maxim: "Anything that functions as a market currency inherits the rulings of gold and silver."
    - Claimed *maṣlaḥah mursalah*: Preventing economic harm. *(Note: This linkage between legal maxim and presumed economic benefit is problematic and will be critiqued later, God willing.)*
    - Connection to revelation: A holistic inference from all texts prohibiting *ribā* and commanding the preservation of wealth.

Fourth: Safeguards Against Arbitrary Human Legislation

The Mālekīs imposed three essential conditions for recognizing a *maṣlaḥah mursalah*:

Condition 1: It Must Fall Under an Established Legal Principle

Only interests that align with a recognized Sharīʿah objective—demonstrated through proper inductive reasoning—are valid. ʿIzz al-Dīn ibn ʿAbd al-Salām (d. 660 AH) states: "Any interest not affirmed by the foundational principles of Sharīʿah is invalid, for the Lawgiver does not neglect any recognized interest."(*Qawāʿid al-Aḥkām*, vol. 1, p. 8)

Condition 2: It Must Not Contradict Specific Texts

If a definitive textual proof (verse, hadith, consensus) contradicts the claimed interest, the text takes precedence. Imām Mālek is reported to have said: "No one may speak from personal opinion when a text exists." (*Tartīb al-Madārik*, al-Qāḍī ʿIyāḍ, vol. 1, p. 150) Thus, *maṣlaḥah mursalah* is never accepted in domains already addressed by clear evidence. If a text or consensus exists, the true benefit lies in obeying it—not in what people perceive.

Condition 3: The Interest Must Be Public and Universal, Not Partisan or Personal

Its application must result in benefit for the community or remove harm from society—not satisfy a ruler's desire or serve the narrow interests of a select group.
Some scholars thus label it "public interest" (*al-maṣlaḥah al-ʿāmmah*) to distinguish it from individual or factional bias. An example: During times of extreme inflation, a ruler may compel merchants to set prices (pricing regulation), despite the Prophet ﷺ generally prohibiting price-fixing (as it is unfair to traders). In this exceptional case, *maṣlaḥah mursalah* was invoked to prevent a greater injustice—justified under the maxim of "removing widespread harm." Many scholars affirm that a valid *maṣlaḥah mursalah* must not involve a specific instance of a *generically prohibited category*.
Thus, for example:

- Instituting traffic systems using lights and regulations is a valid *maṣlaḥah mursalah*, as it preserves life and property (goals of Sharīʿah), contradicts no text, and falls under the principle: *"Do not harm nor reciprocate harm."*
- However, legislating an interest-based banking system (*ribā*) under the pretext of economic growth is invalid, as it directly contravenes explicit prohibitions against *ribā*.

(See the forthcoming chapter: *There Is No Legislative Vacuum – "Today I Have Perfected Your Religion"*, which will elaborate on why traffic regulations are not cases of unrestricted benefit derived without evidence.)

Fifth: Testimonies from Usūl Scholars Validating This Methodology

1. **Imām al-Bājī (d. 474 AH):** "The mursalah is that which is inferred based on the intent of the Lawgiver to procure benefits and avert harms, without reliance on a specific foundational text." (*Iḥkām al-Fuṣūl*, p. 470)
2. **Ibn ʿĀshūr (d. 1393 AH):** "Inference through the mursalah consists of deriving rulings from the general objectives of the Sharīʿah, not from a specific textual proof. It relies on inductive conceptual analysis of the revealed texts."(*Maqāṣid al-Sharīʿah al-Islāmiyyah*, p. 125)
3. **Al-Qarāfī (d. 684 AH):** "The difference between analogy (*qiyās*) and the mursalah is that analogy relies on a specifically documented source, whereas the mursalah is based on general principles inferred from the totality of the evidence." (*Nafāʾis al-Uṣūl*, vol. 9, p. 4231)

Summary of Methodology

The Mālekī distinction between:

- A ruling based on **direct textual evidence** (from detailed proofs), and
- A ruling based on **maṣlaḥah mursalah**,
- is grounded on the following foundations:

1. **Absence of Specific Proof**: The ruling lacks a direct textual basis (verse, hadith, consensus, etc.).
2. **Connection to a General Principle**: The interest must align with a recognized Sharīʿah objective or legal maxim.
3. **Comprehensive Induction**: A systematic collection of related texts is needed to establish the validity of the interest.
4. **Adherence to the Evidentiary Framework**: It is impermissible to bypass detailed textual rulings or the fixed objectives of the Sharīʿah.

Thus, any ruling based on *maṣlaḥah mursalah* remains tethered to revelation by the bridge of inductive reasoning, not by arbitrary opinion. As Imām al-Shāṭibī said: "The Lawgiver has not left any true interest unclarified—whether in detailed form or in general." (*al-Muwāfaqāt*, vol. 2, p. 290)

Al-Shāṭibī's Conditions for *Maṣlaḥah Mursalah* in *al-Muwāfaqāt*

Imām al-Shāṭibī laid down rigorous conditions to ensure that *maṣlaḥah mursalah* would not degenerate into rationalistic legislation or caprice, thereby preserving its bond with divine revelation. His key conditions are:

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1. Subsumption Under the Core Objectives of the Sharīʿah

The interest must fall under one of the five essential objectives of the Sharīʿah:

- Preservation of religion, life, intellect, lineage, or property. "Any interest not validated by the Sharīʿah's foundational principles is inadmissible… It must be grounded under a general principle." (*al-Muwāfaqāt*, vol. 2, p. 284).

Example: Prohibiting narcotics like heroin due to the objective of preserving the intellect—even though no direct text addresses heroin.

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2. Generality and Continuity—Not Personal or Situational

The interest must be **public** and address societal needs, not serve individual or transient circumstances.
"Partial, individual interests are not recognized; the interest must be general, consistent with the types of benefits prioritized by the Sharīʿah." (*al-Muwāfaqāt*, vol. 2, p. 301)
Example: Mandating vaccination to prevent the spread of infectious disease—under the principle of *"no harm and no reciprocation of harm."*

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3. Certainty or Preponderant Probability—Not Speculation

The interest must be **certain** or strongly probable in achieving benefit or averting harm—not based on conjecture.

"The mursalah is not implemented unless the interest is realized or overwhelmingly likely. Imaginary interests are not part of religion." (*al-Muwāfaqāt*, vol. 2, p. 295)
Example: Prohibiting monopolies (*iḥtikār*) to prevent famine, based on solid economic knowledge.

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4. Non-Contradiction with Texts or Consensus

If the proposed interest conflicts with a textual proof or scholarly consensus, the text prevails.
"The mursalah is rejected if it contradicts a text, because revealed proof is superior to any inferred principle." (*al-Muwāfaqāt*, vol. 4, p. 145)

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5. Organic Connection with the Maqāṣid of Sharīʿah

The interest must be a **natural extension** of Sharīʿah objectives, not a foreign construct.
"It is invalid to fabricate an interest detached from the Lawgiver's objectives; it must be integrally connected, like a branch to its root." (*al-Muwāfaqāt*, vol. 2, p. 289)

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6. Compliance with the Method of Sharīʿah Induction

The validity of the interest must be established via **comprehensive induction** of textual sources—not isolated reasoning. "The validity of *maṣlaḥah mursalah* is contingent on comprehensive induction of Sharīʿah's evidences; that which conforms to the collective body is accepted." (*al-Muwāfaqāt*, vol. 2, p. 286)

The Outcomes of Applying These Conditions, According to Al-Shāṭibī

1. **Prevents Human Legislation**:
    - The interest becomes an instrument to serve revelation—not a rival.
    - "The Lawgiver has not left any interest unexplained—either in detail or in general." (*al-Muwāfaqāt*, vol. 2, p. 290)
2. **Eliminates Capricious Reasoning**:
    - Requiring generality and induction blocks self-serving interpretations.
    - "Every interest not regulated by Sharīʿah is merely opinion driven by desire." (*al-Muwāfaqāt*, vol. 2, p. 305)
3. **Protects Religion from Innovation**:
    - Anchoring interests in general texts blocks intellectual innovations.
    - "The mursalah, if stripped of these controls, becomes religious innovation." (*al-Muwāfaqāt*, vol. 4, p. 101)
4. **Ensures Legislative Unity**:
    - *Maṣlaḥah mursalah* becomes part of the Sharīʿah's evidentiary framework—not an independent source.
    - "The evidences of Sharīʿah are like a single body: each part supports the other." (*al-Muwāfaqāt*, vol. 2, p. 73)

Conclusion

Al-Shāṭibī's conditions transform *maṣlaḥah mursalah* from a **rational speculation** into:

- A discovery of divine purpose through inductive reasoning.
- An application of the overarching structure of revelation.
- A safeguard against unauthorized legislation.
- A servant to revelation—not a competitor to it.

Maṣlaḥah Mursalah in the Mālekī School: A Disciplined Legal Effort Bound by Revelation, Not an Independent Rational Foundation

A methodological analysis of various legal issues within the Mālekī school demonstrates how *maṣlaḥah*-based rulings were derived through inductive reasoning from revealed texts and applied to real-world situations—not by inventing legislation based on pure reason.

In this section, we clearly demonstrate that the Mālekīs' reliance on *maṣlaḥah mursalah* was not a departure from revelation nor a basis for independently constructed rational legislation. Rather, it was a process of inductive *ijtihād*—constructing an understanding of a novel legal scenario and then applying general principles and objectives of the Sharīʿah, as drawn from the revealed texts to that scenario. Thus, for Mālekīs, "interest" is not a rational authority, but a branch dependent upon the texts or the objectives inferred from them.

We will illustrate this through the analysis of several Mālekī rulings established via this methodologically disciplined approach. These examples demonstrate that, even in cases lacking specific scriptural texts, Mālekī legal rulings remained governed by and subordinate to revelation, not independent from it.

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1. Giving the Female Slave (Concubine) the Option of Emancipation or Redemption When Sold While Pregnant

If a master cohabits with his female slave and then sells her while she is pregnant by him, Mālekīs ruled that she has the right to choose either emancipation or to pay a ransom and redeem herself—even though there is no explicit Qur'anic or Prophetic text detailing this specific case.

This ruling was based on a general Sharīʿah principle: the removal of harm (*rafʿ al-ḍarar*), citing the hadith: "There is to be neither harm nor reciprocating harm." They also referenced the hadith: "Whoever sells a slave woman with whom he has intimate relations, her intimacy is for him alone." From this, they inferred that the master's intimacy is not merely a physical act but entails humane rights that cannot be nullified through sale. The ruling is thus rooted in general texts and objectives—like protecting dignity and preventing injustice.

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2. Prohibiting the Execution of a Group for the Murder of One Individual (Unless Proven Conspiratorial)

Contrary to the majority of jurists, the Mālekīs prohibited executing a group of people for the killing of one person unless joint conspiracy is proven. They cited the hadith: "More than one person may not be executed for killing one person" (reported by al-Bayhaqī and authenticated by Ibn ʿAbd al-Barr), and argued that *qiṣāṣ* (retaliation) is built on justice and equivalence, not vengeance. They also referenced the verse: "And We ordained for them therein: a life for a life..." [al-Mā'idah 5:45], arguing that the language demands equivalence, which is absent in executing multiple individuals for one death, unless fairness is established.

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3. Requiring the Consent of an Adult Virgin in Marriage and Prohibiting Her Forced Marriage

While some scholars allowed coercing an adult virgin into marriage, the Mālekīs required her explicit consent. They cited the hadith: "The virgin must be consulted regarding herself," and: "A matron has more right over herself than her guardian, and the virgin is to be asked for permission." Although these texts do not explicitly prohibit coercion, their tone and purpose affirm the value of consent and personal dignity. Since marriage is a contract of mutual agreement, coercion contradicts its essence. This ruling is thus grounded in sound scriptural objectives—not in subjective reasoning.

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4. Rejecting Legal Stratagems (*ḥiyal*) to Circumvent the Prohibition of Usury (e.g., *ʿīnah* Transactions)

Mālekīs rejected deceptive sales contracts that disguise usury, such as selling a commodity on deferred payment then buying it back for cash at a lower price. They deemed this hidden usury. They based their judgment on the principle: "Matters are judged by their purposes," and on the verses: "Do not consume one another's wealth unjustly," [al-Baqarah 2:188] and: "Allah has permitted trade and forbidden usury." [al-Baqarah 2:275] They also cited the statements of the Companions emphasizing the closure of pathways to forbidden matters (*sadd al-dharā'iʿ*). Thus, even if the external form resembled a sale, the intention was usurious profit, which the Sharīʿah forbids.

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5. Accepting the Sole Testimony of a Woman in Matters of Nursing and Childbirth

Although the default in testimony is two men or one man and two women, Mālekīs accepted the testimony of a single woman in cases typically known only to women—such as nursing or childbirth.

They grounded this on the purpose of testimony: *achieving knowledge*, and interpreted the verse: "If there are not two men, then one man and two women from those whom you approve as witnesses…" [al-Baqarah 2:282], to mean that the number of witnesses is intended for preserving accuracy, not based on gender per se.
They also cited the hadith of ʿUqbah ibn al-Ḥārith, in which the Prophet ﷺ separated him from his wife based on the sole testimony of a woman that she had nursed them both. This shows how Mālekīs established rulings from transmitted texts and extended them through *maqāṣid*-based analogy.

Conclusion

All of these Mālekī rulings—though often assumed to be based on *maṣlaḥah mursalah*—are in reality derived from the revealed texts: either through inductively derived *maqāṣid* of the Sharīʿah or valid analogical reasoning grounded in textual causes (*ʿilal*). Thus, for the Mālekīs, "interest" is not a purely rational construct but a Sharīʿah-bound principle, anchored to revelation both in its formulation and application.
This demonstrates clearly that reason in the Mālekī school is a servant of revelation—not a legislator alongside it.

Maṣlaḥah in the Doctrinal Schools (Ḥanafī and Mālekī): A Complement to Revelation, Not a Foundation for Independent Reason

Many people mistakenly believe that *istiḥsān* (juridical preference) in the Ḥanafī school, or *maṣlaḥah mursalah* (unrestricted public interest) in the Mālekī school, represents a rationalist tendency that falls outside the framework of the revealed texts. They assume that the *mujtahid* (jurist) relies on personal judgment to determine what is beneficial, thereby altering the Sharīʿah ruling or creating a new one not rooted in revelation. This is a mistaken view that contradicts the methodology of the founding Imams and casts suspicion upon their jurisprudence, suggesting that it was based on independent rational legislation—something we firmly reject. That said, these legal tools have indeed been misused at times due to a lack of methodological safeguards to prevent error.
The correct view—confirmed through inductive analysis of their juristic efforts—is that the jurists of the classical schools never granted the intellect legislative authority. Rather, they held that rulings are to be derived solely from revelation, either explicitly through texts or implicitly through derivation from the Sharīʿah's general principles. The function of the intellect is thus to understand the meaning of the texts and to extrapolate rulings for cases not explicitly mentioned, and this process must remain within the parameters extracted from Sharīʿah evidence—not from a freestanding rational authority.
Thus, *ijtihād* is not the act of deriving rulings from pure reason, but a diligent effort to discover what the revelation implies by connecting particulars to general principles, branches to their roots, and texts to their underlying purposes. If a case arises in which *qiyās* (analogy) or a literal reading appears to indicate a certain ruling, but applying that ruling leads to a harm of the same type that the Sharīʿah has prohibited elsewhere, then abandoning that literal ruling—whether through *istiḥsān* or *maṣlaḥah mursalah*, is not an appeal to whim. Rather, it is a deeper attempt to apprehend the Sharīʿah's structural coherence and comprehensive aims. Admittedly, this approach is not always executed flawlessly.

Illustrative Example: Reviving Dead Land and the Condition of Government Authorization

The Prophet ﷺ said: "Whoever revives dead land, it belongs to him." The apparent meaning of this hadith is that merely reviving barren land is sufficient for ownership. However, Imām Abū Ḥanīfah stipulated that government authorization (*idhnu'l-imām*) is required. He stated: "Whoever revives dead land without the permission of the ruler, it does not belong to him. The ruler has the right to remove it from his possession."
His student Abū Yūsuf was asked: "What prompted Abū Ḥanīfah to deviate from the hadith?" Abū Yūsuf clarified that Imām Abū Ḥanīfah did not reject the text. Rather, he saw that implementing it without restrictions in the context of an organized state would lead to chaos in land distribution and harm to public welfare—contradicting the Sharīʿah's aims of maintaining order and justice.
Abū Ḥanīfah's *ijtihād* was not a rational judgment outside revelation, but a precise synthesis of related texts: those governing the ruler's authority, safeguarding public order, protecting communal wealth, and preventing conflict—all of which are responsibilities assigned to the ruler by the Sharīʿah. It also addresses a practical dilemma: what if two Muslims revived the same piece of land and disputed it? Abū Yūsuf added: "What Abū Ḥanīfah said does not reject the hadith [meaning his statement does not contradict it]. Rejection would be to say: 'Even with the ruler's permission, it

does not belong to him.' But to say: 'It belongs to him—with the ruler's permission' is in fact following the hadith. The ruler's permission becomes the means for resolving disputes and preventing harm. As for me [Abū Yūsuf], I believe that if there is no harm involved and no dispute, then the permission of the Messenger of Allah ﷺ is valid until the Day of Judgment. But when harm arises, then the other hadith applies: 'There is no right for the oppressive claimant [*ʿirq ẓālim*].'" Thus, overriding principles are derived from the foundational sources and used to govern subsidiary *ijtihād*. The principle of "no harm" (*lā ḍarar wa-lā ḍirār*), and the duty of the ruler to prevent conflict and safeguard his subjects, were applied here to qualify the general hadith—ensuring it does not conflict with broader Sharīʿah objectives. Therefore, the basis of opinion was not pure reason, but juristic analysis derived from Sharīʿah principles and general objectives. Indeed, Abū Ḥanīfah's juristic intellect was "strong in interpreting texts by their purposes, motives, and underlying causes, not content to limit explanation to their surface meanings." In this light, *istiḥsān* (juridical preference) in this case represents a prioritization of a comprehensive legal indication derived from the totality of evidences—not an invention of a ruling out of nothing. It is important to note, however, that the issue with both *istiḥsān* and *maṣlaḥah mursalah* is their frequent lack of strict methodological controls, which leads to their improper use in many cases. When used correctly, however, they align with the principles of *uṣūl al-fiqh*, such as applying general rules to specific cases or expanding the scope of *ijtihād* by linking the issue at hand to related concerns—as Abū Ḥanīfah did in this case.

Critique of the Use of Maṣlaḥah Mursalah by Imam al-Nabhani

Just as the Mālekīs employed *maṣlaḥah mursalah*, they did not do so based on an independent rational conception, but on the premise that these interests fall under the universal principles of the Sharīʿah and are understood in light of its higher objectives, which are established through textual evidence.
Imam Taqī al-Dīn al-Nabhānī, in *al-Shakhṣiyyah al-Islāmiyyah*, Volume 3, presents a thorough critique of the concept of *maṣlaḥah mursalah*, focusing on its intellectual and methodological roots, and the consequences that arise if it is accepted as a source of legal evidence. His position can be summarized as follows:

First: Linking Maṣlaḥah Mursalah to Revelation

Al-Nabhānī cites the conditions set by Mālekī scholars to bind *maṣlaḥah mursalah* to revelation. These include:

1. **It must not contradict a valid Sharʿī text (definitive or speculative).**
   Meaning that a benefit is not acted upon if it contradicts the Qur'ān, Sunnah, or scholarly consensus.
2. **The interest must be recognized by the Sharīʿah.**
   That is, it must align with the established objectives of Sharīʿah, such as preservation of the five essentials: religion, life, intellect, lineage, and wealth.
3. **It must not arise from base human desires or whims.**
   That is, it should be free of subjective inclinations or personal inclinations.
4. **It must be general or public, not particular or individual.**
5. **It must not lead to a greater harm.**
6. **It must be consistent with the objectives of the Sharīʿah, not contrary to them.**
7. **It must be derived from a general understanding of revelation, not from a specific text.**
   Hence, the term *mursal* (unattached) indicates that it is not tied to a particular verse or hadith.

Despite listing these conditions, al-Nabhānī argues that regulating interests through rational criteria does not prevent the intrusion of subjective bias into legal reasoning, nor does it substitute for explicit revelation. Therefore, he concludes that these conditions are insufficient to elevate *maṣlaḥah mursalah* to the level of binding Sharʿī proof because:

- Anything not indicated by a divine text is not a legal proof.
- Regulating interests by rational means does not transform them into Sharʿī rulings.
- The very act of identifying the interest is subject to fallible human judgment, which is influenced by environment, emotion, and culture—exposing Islamic law to politicization and secular reinterpretation.

He writes: "To consider something a legal proof merely because it appears beneficial to the mind is precisely the danger—because it entails making the intellect the source of legislation rather than revelation."
He affirms that every valid legal proof must stem from divine speech (Qur'ān or authentic Sunnah or their legal derivatives). Therefore, *maṣlaḥah mursalah* is not a binding legal source, because:

- It is not a divine speech (khiṭāb al-shāriʿ),

- It is not indicated by any specific legal proof,
- It rests on independent rational assessment of benefit rather than on revealed guidance.

Second: Refutation of the Claim that Sharīʿah Exists to Bring Benefit and Remove Harm

Al-Nabhānī critiques the oft-cited maxim that "the Sharīʿah was revealed to bring about benefits and repel harms." He argues this is a **teleological summary**, not a legal justification (ʿ*illah*) that can be analogically extended to derive rulings.

- Verses such as ﴿وما أرسلناك إلا رحمة للعالمين﴾ (We have not sent you except as a mercy to the worlds) describe the result or outcome of the Sharīʿah, not its rationale in each specific ruling.
- Therefore, **not all rulings are based on perceptible benefits.**
- Some rulings are **purely devotional** and cannot be reduced to rational analysis.

He writes:
"The Lawgiver did not assign the category of benefits as a cause for legislation. He did not treat them as causative for the Sharīʿah in general or for specific rulings. Therefore, *maṣlaḥah mursalah* has no legal standing."

Al-Nabhānī's Position on Maqāṣid al-Sharīʿah

He further argues that what is referred to as **maqāṣid** (higher objectives of the Sharīʿah) cannot serve as independent legal proofs because:

- If they refer to **specific rulings**, then they are not "objectives" but legal commands.
- If they refer to **general outcomes** such as mercy or justice, then they are **wisdoms (ḥikmah)** not causes (ʿ*illah*) and do not suffice as bases for legislation.

Third: Rebuttal of the Argument that the Companions Acted Based on Maṣlaḥah

He rejects the argument that the Companions used *maṣlaḥah mursalah* in their decisions (e.g., compiling the Qur'ān, lashing the wine-drinker, discarding tainted milk) by stating:

- The science of uṣūl al-fiqh had not yet crystallized in their time.
- They did not act based on the abstract concept of *maṣlaḥah* but on **evident legal indications** or **analogical reasoning** based on textual causes.

Fourth: The Dangers of Using Maṣlaḥah Mursalah

Al-Nabhānī warns that adopting *maṣlaḥah mursalah* leads to:

- Legislating through the human mind, contrary to divine command: ﴿ومن لم يحكم بما أنزل الله﴾, ﴿وما آتاكم الرسول فخذوه﴾
- The door of **subjective bias** and politicized jurisprudence, as different people will judge benefit differently.

Additional Methodological Observations

1. **Lack of rigorous inductive methodology.**
   Al-Shāṭibī only required high probability in inferring maqāṣid from texts. But such methods lack a link to clear textual causes (ʿ*ilal*). Often these "interests" are based on loosely observed, imagined benefits rather than proven necessities.
2. **Subjective variation in evaluating benefit.**
   There is no objective method to define when a supposed benefit becomes a legal justification.
3. **Confusion between objectives and causes.**
   Maqāṣid are **results**, not **causes**. Just because the Sharīʿah protects wealth does not mean that anything thought to protect wealth is legally valid.
4. **No legislative gap exists.**
   Imam al-Ghazālī in *al-Mustaṣfā* writes: "Every incident imaginable has a ruling in the Sharīʿah—either explicit or implicit, accepted or rejected. To imagine that there is a benefit unaddressed by the law is illusory."

Examples of Methodological Errors in Applying Maṣlaḥah

1. **Making a murder suspect swear an oath based on suspicion.**
   Some Mālekīs allowed this when there were indicators of guilt but no clear evidence, for the sake of blood protection. This opens the door to violating evidentiary procedures.
2. **Dropping the ḥadd for an ignorant adulteress.**
   Some Mālekīs allowed avoiding the ḥadd based on presumed ignorance. But ḥudūd are fixed punishments and cannot be set aside without clear textual grounds.
3. **Delaying ḥadd punishments due to fear of unrest.**
   While this was attributed to ʿUmar in the Year of Famine, he didn't act on *maṣlaḥah* but on the **suspension of the cause**—the presence of hunger negated the theft's criminality.

Comparison Between Maṣlaḥah Mursalah and Legal Causation (Qiyās)

Aspect	**Maṣlaḥah Mursalah**	**ʿIlah in Qiyās**
Source	Rational estimation without direct textual basis	Textual or inductively derived cause
Argument	Harmony with general Sharīʿah objectives	Specific cause tied to legal ruling
Method	Derives a general interest	Seeks a precise legal rationale (ʿillah)
Risk	High—due to variable judgment and subjectivity	Lower—due to anchored method of extraction

Is It Truly "Unattached" to Revelation?

An Analytical Refutation of the Most Common Example Cited in Support of Maṣlaḥah Mursalah
Let us examine some of the most frequently invoked cases used to justify *maṣlaḥah mursalah*.

Example 1: The Compilation of the Qur'an during the Caliphate of Abū Bakr

The claim:

They argue that the Prophet ﷺ did not explicitly instruct the compilation of the Qur'an into one volume during his lifetime, yet the Companions undertook this task motivated by the higher objective of preserving the religion. Hence, it was done for the sake of public interest (*maṣlaḥah*), despite the absence of a specific text.

The rebuttal and analysis:

1. **The compilation was not a new act of legislation**, nor did it establish a new legal ruling. Rather, it was a matter of preserving divine revelation already affirmed by **mutawātir** (mass-transmission) evidence. It was not a subjective decision or an opinion-based addition, but a **documentation and safeguarding** of the Qur'an, exactly as it had been revealed and transmitted. As scholars have noted: *"The compilation of the Qur'an did not consist of transcribing from memory; rather, it involved collecting the parchment sheets that had been written in the presence of the Prophet ﷺ, cross-verifying them with what the memorizers possessed, and placing them together in a single location."*
2. **A general textual basis for the preservation of religion exists.**
   For example, the verse: **"Indeed, it is We who sent down the Reminder, and indeed, We will be its Guardian."** (Qur'an 15:9). From a legal-theoretical perspective, the verse conveys its meaning through **implication, necessary entailment, and logical necessity**:
   - The wording expresses an emphatic divine promise of preservation: *"Indeed, We..."* emphasizes the exclusivity and certainty of divine authorship. *"...We will be its Guardian"* confirms the divine responsibility for preservation, of the wording, structure (letters, words), and meaning (beliefs, commands, doctrine).
   - The divine guarantee necessarily entails **permissible and effective means of preservation**, such as documentation, inferred from the structure of the verse (including the present participle and emphatic particle), as well as from the juristic maxim: *"Whatever is necessary to fulfill an obligation is itself obligatory."*

- This is exactly what the Companions enacted, after reflection and consultation, especially Abū Bakr (may Allah be pleased with him), who initially hesitated before recognizing the necessity—highlighting his deep commitment to not innovating beyond the Prophet's ﷺ guidance. The divine preservation occurs through human agency, according to the established Sunnah of Allah, and thus the act of the Companions forms part of the **divinely mandated preservation**, not a humanly derived interest (*maṣlaḥah*), just as the Prophet ﷺ had previously ordered writing the Qur'an on parchment and bones.

3. **The legal maxim: "Whatever is necessary to fulfill an obligation is itself obligatory"** is firmly rooted in the Qur'an and Sunnah. Since the preservation of the Qur'an is a legal obligation upon the entire Ummah, and since the risk of its loss increased with the deaths of those who had memorized it, writing it down became the only reliable means of preservation. Hence, **the compilation of the Qur'an was a religious obligation**, not a rationally devised benefit (*maṣlaḥah*)—it was the practical enactment of a divine imperative.
4. **Authentic traditions affirm this understanding.**
   In Ṣaḥīḥ al-Bukhārī, Abū Bakr was initially reluctant until ʿUmar insisted, saying: *"How can we do something that the Messenger of Allah ﷺ did not do?"* To which ʿUmar replied: *"By Allah, it is good."* Eventually, they realized that although the Prophet ﷺ had not compiled the Qur'an into a single volume, he had **ordered its writing** in scattered form, and he had **assigned precise placements** for new verses. Hence, **this action was not a "new innovation,"** but an extension of a practice already endorsed by the Prophet ﷺ. Furthermore, the absence of an act during the Prophet's ﷺ lifetime does **not** necessarily mean it is prohibited or an innovation—especially when there is **no textual prohibition** and the action is rooted in **existing Sharʿī principles.**
5. **The legal axiom "There is to be neither harm nor reciprocating harm"**
   The ḥadīth narrated by al-Ḥākim – is a foundational proof obligating the **removal of harm**. The fear of the Qur'an being lost due to the deaths of memorizers was a **definite harm**, and therefore removing that harm through compilation was a **Sharʿī obligation**, not a subjective decision grounded in rational benefit.
6. **The Prophet's ﷺ own practice supports the precedent of writing.**
   Zayd ibn Thābit (may Allah be pleased with him) said: *"We were with the Messenger of Allah ﷺ compiling the Qur'an from parchment scraps."* (Narrated by al-Ḥākim and authenticated by al-Dhahabī). This indicates that the Prophet ﷺ had already instituted a process of **writing and assembling** the Qur'an, although in a scattered form. The Companions assigned as scribes of revelation would immediately document verses as they were revealed, by direct instruction from the Prophet ﷺ, and he would specify the order of verses within surahs—even if the verses were revealed at different times.
7. **The final review of the Qur'an by Jibrīl with the Prophet ﷺ in his last Ramadan** is a **clear indication of compilation and arrangement**. The Prophet ﷺ said in the ḥadīth of Ibn ʿAbbās: *"Jibrīl would meet me every year to review the Qur'an. In the year of my death, he reviewed it with me twice."* (Narrated by al-Bukhārī) This confirms the **completion and ordering** of the Qur'an prior to the Prophet's ﷺ death, and the preservation of its final form. What remained was only to gather the scattered parchments into one cohesive volume—a task the Companions undertook in full fidelity to the final recension of the Qur'an. Ibn Ḥajar al-ʿAsqalānī wrote in *Fatḥ al-Bārī* (9/45): *"The final review [al-ʿarḍah al-akhīrah] is the version upon which the Imam Muṣḥaf (standard Qur'an) was based, and all conflicting readings were discarded thereafter. Zayd ibn Thābit relied on it for the compilation."* Thus, the work of the Companions was an act of **preservation of revelation**, not an ijtihād based on speculative benefit. It was a consolidation of the Qur'an **in its final revealed form**, not a rational initiative.

Conclusion:

The compilation of the Qur'an was not a new legislative act, nor an instance of *maṣlaḥah mursalah*. It was a **continuation of the Prophet's ﷺ practice**, rooted in general and specific **textual commands** to preserve the religion, eliminate harm, and fulfill obligations. It was built on established **uṣūlī principles** such as:

- *What is necessary to fulfill an obligation is obligatory,*
- *Means take the ruling of their ends,*
- *There is no harm nor reciprocating harm.*

Therefore, this example—frequently cited as a basis for validating *maṣlaḥah mursalah*—is in fact a **Sharʿīly anchored act**, not one detached from revelation.

2. Administering an Oath to the Accused Killer in Cases of Suspicion

The Incident:
In a situation where a murder victim is found, but no definitive evidence is available to convict a suspect, and the victim's family accuses someone who denies the act—should the accused be compelled to take an oath?
Some Mālekī scholars permitted administering an oath to the accused in such cases, even though the legal principle is that: "The burden of proof is upon the claimant, and the oath is upon the one who denies."
Claimed Justification (by those who invoke *maṣlaḥah mursalah*):

- This ruling, according to some jurists, is seen as an application of *maṣlaḥah mursalah* based on:
  - Realizing justice and preventing bloodshed from being in vain.
  - Deterring the spread of murder without accountability.
  - Preserving lives and fulfilling the higher objective of protecting human life.
- They cited the legal maxim: *"Blood must not be spilled in vain,"* and the prophetic statement: *"Ward off legal punishments as much as possible through ambiguities."* Thus, they considered this ruling a rational, compelling benefit not supported by direct textual evidence—and therefore classified it as a case of *maṣlaḥah mursalah*.

Al-Nabhani's Rebuttal and Verification:
"Among the arguments cited by advocates of maṣlaḥah mursalah is the case of administering an oath to a suspected killer. They reasoned that since blood must not be wasted, the suspect should be made to swear an oath. But this, too, is invalid. The payment of blood money (diyyah) is only warranted by confession or definitive evidence—as established in the hadith of al-qaṣāmah and others. There is no authentic report from the Prophet ﷺ commanding the oath to be taken in such cases of mere suspicion. Therefore, this cannot serve as a precedent for analogy, nor does it qualify as a valid Sharʿī interest. On the contrary, it contradicts what is established in the Sunnah." (*Al-Shakhṣiyyah al-Islāmiyyah*, vol. 3, pp. 168–169).

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3. Killing a Group for the Murder of One Person

The Incident:
ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) ordered that a group of individuals who collectively murdered a single man be executed.
Claimed Justification:
Some argue this violates the literal text, which mandates only the individual killer be punished. They thus frame it as an instance of *maṣlaḥah mursalah*, to:

- Deter collusion in murder,
- Close the door to exploitative schemes where individuals conspire to share guilt to avoid retribution.

Al-Nabhani's Analysis:

- This ruling is **not** an extra-textual *maṣlaḥah* but rather an **analogy (qiyās)** based on group theft.
- Al-Nabhani explains that ʿUmar based his ruling on the Qur'anic punishment for **cooperative theft**, where all involved thieves are subject to the same penalty:

"As to the thief, male or female, cut off their hands..." (Qur'an 5:38)

- The analogy here rests on the fact that the crime was perpetrated jointly. Even if only one hand carried out the act, **all participants are culpable**, just as in group theft.

Conclusion:
This ruling is **not** an instance of *maṣlaḥah mursalah*, but rather a valid partial analogy (*qiyās*) based on an act explicitly covered by revealed text.

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4. Pouring Out Adulterated Milk

The Incident:
ʿUmar (may Allah be pleased with him) ordered that milk mixed with water for purposes of deception be discarded.
Claimed Justification:

Some argue this is a rationally-driven punitive measure not explicitly legislated in the texts—thus an example of *maṣlaḥah mursalah*—since it entails destruction of private property.

Al-Nabhani's Rebuttal and Clarification:

- This act falls under **taʿzīr (discretionary punishment)**, a recognized category in Islamic law.
- *Taʿzīr* is delegated to the ruler's discretion in all matters where no fixed ḥadd punishment is specified.
- It includes a variety of penalties: rebuke, imprisonment, public shaming, physical punishment, or destruction of goods—depending on what the imam (ruler) deems effective for deterrence and justice.
- Imām Mālek himself stated:

"Whoever causes harm to the Muslims, the imam must discipline him in whatever way he sees fit."

Conclusion:

The disposal of the milk was a **legitimate disciplinary act** under the domain of *taʿzīr*, not an instance of unrestricted, rationally-derived *maṣlaḥah* in the legal-theoretical sense.

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5. Lashing for Alcohol Consumption Beyond the Prescribed Forty

The Incident:

ʿAlī ibn Abī Ṭālib and other Companions inflicted eighty lashes for alcohol consumption, even though the Prophet ﷺ is reported to have applied forty lashes.

Claimed Justification:

Some argue that this increase reflects a new rule based on *maṣlaḥah*, going beyond the original textual limit.

Response and Verification:

- Muslim narrates from ʿAlī ibn Abī Ṭālib: *"The Prophet ﷺ lashed forty times, Abū Bakr forty times, and ʿUmar eighty times. All are sunnah, but I prefer this (eighty)."* In another narration: *"Indeed, the Messenger of Allah ﷺ lashed forty, and Abū Bakr forty, and ʿUmar eighty, and all of it is sunnah, and I prefer the latter."*
- This shows that the **increase was not a new legislation**, but a **discretionary augmentation (taʿzīr)** within the accepted bounds of the punishment.
- Scholars have distinguished between **ḥadd punishments** (fixed by revelation) and **discretionary punishments**, where the imam adjusts based on context and recurrence.
- When alcohol consumption became widespread during ʿUmar's caliphate, he escalated the penalty to eighty lashes to intensify deterrence, still within Sharʿī limits.

Note:

There is a difference of opinion among jurists whether the punishment for alcohol is a fixed *ḥadd* or a form of *taʿzīr*. Those who view it as *taʿzīr* cite the hadith: *"Whoever drinks alcohol, lash him. If he returns, lash him again. If he returns, lash him again. Then kill him."* (Narrated by Aḥmad and Abū Dāwūd).

- They argue that if it were a ḥadd, it would not escalate repeatedly in this way.
- Others point to the nature of the text and context to confirm it as a fixed ḥadd.
- Additionally, ʿUmar and ʿAlī reasoned by analogy with **false accusation (qadhf)**, since alcohol often led to slander and obscenity. Thus, they applied the punishment for qadhf (eighty lashes) as a suitable parallel. This analogy is reported by al-Bayhaqī and others.

Conclusion:

The increase in lashes was a case of **Sharʿīly grounded taʿzīr**, not a new law invented based on unaided rational benefit (*maṣlaḥah*).

Final Summary:

Even in the cases where jurists invoked *maṣlaḥah mursalah*, a careful analysis reveals that:

- The rulings did **not emerge from abstract, rational deliberation**,
- But rather from **legal reasoning grounded in revelation**—applying general principles (*kulliyyāt*) to specific cases (*juz'iyyāt*),
- Thus, the reference point was always the **text (waḥy)**.

True *maṣlaḥah* is never an independent legislative source. It is always **extracted** from the objectives and structure of the Sharīʿah—not **fabricated** through speculative benefit.

Conclusion: No Legislating Reason—Only Reason Serving Revelation

Neglecting higher principles and objectives (*maqāṣid*) in ijtihād may indeed lead to defective rulings. But when specific cases are connected to their broader legal principles, such as justice, removing hardship, and preserving essentials, the resulting rulings become more precise and aligned with the divine will.
This is the method of the leading jurists:
They did **not separate interest from revelation**, nor did they **elevate reason to a legislative role**. Rather, they treated reason as a **tool** for understanding revelation and deducing its intended applications.
Their aim was **not to affirm what reason deems a benefit**, but to **discover what the Sharīʿah deemed beneficial from the outset**.
It is worth noting that applying general rulings to their particulars, studying the meanings indicated by the texts, and using inductive reasoning—methodologies that were exemplified, to some extent, in the Mālekī school's use of *maṣāliḥ mursalah* (unrestricted public interests)—are, in and of themselves, acceptable methodologies, even if some of their derivatives are incorrect for reasons we previously explained in the earlier chapter. To clarify this, we now offer the following:

The Methodology of Sharī'ah-Based Ijtihād (Legal Reasoning)

We can formulate the methodology followed by the *mujtahid* (qualified jurist) in deriving legal rulings as follows, focusing on the methodological tools employed in deriving *sharīʿah* rulings—tools that go beyond the mere existence of a direct textual proof. These tools rely on the nuances of textual indications, legal maxims, effective causes (*ʿilal*), and overarching objectives (*maqāṣid*).

Introduction: The Meaning and Function of *Ijtihād*

Ijtihād is the exertion of scholarly effort to derive a *sharīʿah* ruling from its detailed evidences with predominance of thought (*ghalabat al-ẓann*), and within a disciplined framework of methodology. It is the mechanism that ensures the application of *sharīʿah* texts to new and emerging life circumstances, guided by sound inductive, linguistic, rational, and legal principles.

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1. Linguistic Tools: Lexical Indications and Their Role in Deriving Rulings

a. Types of Indications:

- **Indication by correspondence (muṭābaqa):** The word signifies its entire meaning (e.g., "human" = rational animal).
- **Indication by inclusion (taḍammun):** The word implies part of its meaning (e.g., "human" = animal only).
- **Indication by implication (iltizām):** The word suggests a necessary connotation (e.g., "lion" = courage).

"Modes of textual indication include: indication by wording (*manẓūm*), by implication (*mafhum*), by necessity and entailment (*iqtiḍāʾ*), and by inferred meaning (*al-maʿnā al-maʿqūl*), which forms the basis of *qiyās* (analogical reasoning)."

b. Core Concepts in Legal Hermeneutics:

General and specific (*ʿāmm/khāṣṣ*), absolute and qualified (*muṭlaq/muqayyad*), ambiguous and clarified (*mujmal/mubayyan*), apparent and explicit (*ẓāhir/naṣṣ*), expressed and implied meaning (*manṭūq/mafhum*), and the distinction between command and prohibition.

c. Exploiting Linguistic Indication:

Legal meanings are derived through four primary means:

- **Form-based:** (e.g., command/prohibition, general/specific, literal/metaphorical)
- **Implication-based:** (e.g., *dalīl al-khiṭāb*, *fahwā al-khiṭāb*)
- **Necessity-based:** where the law implies conditions not explicitly stated
- **Rational meaning-based:** linking textual meaning with *qiyās* and *maqāṣid*

Example:

The word *bayʿ* (sale) in *sharīʿah* includes all forms of transactional exchange—whether traditional, electronic, or bartering—so long as the essential contractual element (transfer of ownership for compensation) is present.

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2. Legal Maxims and Sharīʿah Definitions

a. Definition:
Legal maxims (e.g., "harm must be eliminated," "certainty is not removed by doubt") are not standalone sources of law but general legal rules inferred from detailed evidence, on which analogous rulings may be based.
b. Function in *Ijtihād*:

- Used to regulate rulings in the absence of explicit texts.
- Employed in general jurisprudence as interpretive and organizational tools.

c. Example:
The maxim "a means to the unlawful is unlawful" underlies rulings such as:

- Prohibiting the sale of grapes to one who will make wine
- Banning pornographic websites despite no direct text

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3. *Qiyās* (Analogical Reasoning) and the Legal Cause (*ʿillah*)

a. Pillars of *Qiyās*:

- **Origin (aṣl):** A matter with an explicit ruling
- **New case (farʿ):** A case lacking explicit ruling
- **Effective cause (ʿillah):** A common rational feature between them
- **Legal ruling:** The outcome in the origin case extended to the new one

b. Conditions for the *ʿillah*:
The *ʿillah* must:

1. **Be a true legal cause**—not arbitrary or merely correlational
2. **Be apparent, regulated, and appropriate**—not hidden or inconsistent
3. **Effectively determine the ruling**—i.e., understood as the motivator behind it
4. **Not contradict any textual or consensus-based proof**
5. **Be consistent**—its presence or absence always entails the ruling
6. **Be transferable**—not restricted to one case
7. **Be supported by legal evidence**—not purely rational or utilitarian
8. **Not itself be another legal ruling**

c. Strict Boundaries:
Rejecting speculative or "assumed" causes (*ʿillah mawhūmah*), or utilitarian objectives that may not be universally applicable—as is often the case with claims based on *maṣāliḥ mursalah*.
d. Example:
The prohibition of lease contracts during the Friday call to prayer is derived analogically from the prohibition of sales, due to the shared cause of distracting from obligatory prayer.

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4. Sharīʿah-Based Delimiters that Define General Categories

In practice, the *mujtahid* studies the context and reality at hand—a rational process—before analyzing the *sharīʿah*-based parameters that define which general legal category the case may fall under. This includes clarifying key criteria, such as what constitutes an intoxicating substance (*khamr*) and how it differs from a narcotic or vinegar. Once the relevant descriptors are verified, the ruling for *khamr* is applied to the actual case—e.g., "whiskey is an intoxicant, therefore prohibited, in large or small quantities."

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5. Induction (*Istiqrāʾ*) and Generalized *Qiyās*

Induction involves observing numerous specific rulings to infer a general legal principle and is often employed in identifying *maqāṣid* (higher objectives of the law).
a. Conditions:
Induction must be complete or nearly comprehensive. Incomplete induction leads to erroneous generalizations.
b. Caution Against Overuse:

Unqualified reliance on inductive reasoning (e.g., assuming that "preservation of reason" is the cause behind a ruling) is rejected—especially when presented as an independent legal proof, as al-Nabhānī critiques.

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6. *Maqāṣid al-Sharīʿah* and Their Restrictive—not Foundational—Function

a. Distinction Between *ʿillah* and *Maqṣad*:

- *ʿillah*: A specific, verifiable legal cause suitable for analogy.
- *Maqṣad*: A general objective used to confirm the consistency of a ruling—not to legislate new rules.

b. Example:

A legal maxim cannot be established merely because it seems to fulfill a "public interest." A recognized *sharīʿah* proof must underpin its legitimacy.

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7. Hierarchy and Sequencing of Legal Evidences

a. Evidential Hierarchy:

Qur'an > Sunnah > Consensus (*ijmāʿ*) > Valid *qiyās*

In case of apparent conflict, principles such as *naskh* (abrogation), *takhsīs* (specification), and *taqyīd* (qualification) are employed.

b. Dealing with Definitive vs. Probabilistic Evidence:

Probable evidence (*ẓannī*) is valid for deriving practical legal rulings (*aḥkām ʿamaliyyah*), unlike doctrinal matters.

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8. Methodological Controls in *Ijtihād*

a. No *Ijtihād* in definitive matters (*qaṭʿiyyāt*)

b. Use of auxiliary legal principles:

- **Presumption of continuity (*istiṣḥāb*):** A ruling remains until disproven.
- **Blocking means (*sadd al-dharāʾiʿ*):** Preventing pathways to the unlawful.
- **Weighing conflicting evidence (*tarjīḥ*):** Favoring stronger evidence.

Conclusion: Methodological Unity and Integration of Tools

The *sharīʿah*-based methodology of *ijtihād* is not eclectic or haphazard—it is a cohesive, integrated system:

- **Linguistic analysis** ensures meaning is properly constructed
- **Legal maxims** regulate derivative rulings
- **Analogical reasoning** extends rulings with discipline
- **Objectives (*maqāṣid*)** verify coherence but do not generate rulings
- **Conflict resolution and preference** ensure harmony within the system

These components work in unison, forming a meticulous legal-intellectual framework that preserves the authority of *sharīʿah*, both textually and rationally—preventing both legal dilution and rigidity.

The Scholars' Positions on Invoking *Maṣāliḥ Mursalah* (Unrestricted Public Interests)

The jurists' positions regarding *maṣāliḥ mursalah* can be divided into three principal orientations:

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1. Absolute Prohibition

At the forefront of this stance are the **Shāfiʿīs** and some of the **Ḥanafīs**, who categorically rejected the consideration of any benefit (*maṣlaḥah*) that is not explicitly endorsed by a specific textual proof. Their core argument is that opening this door could lead to legislating based on personal desire or reasoned speculation, potentially resulting in opposition to divine texts. Imām al-Shāfiʿī famously declared in his *al-Risālah*: "Whoever engages in *istihsān* (juridical preference) has legislated." In another narration: "*Istihsān* is indulgence. And whoever allows himself to indulge in it has made himself a partner with God in legislating rulings." The point is clear: for al-Shāfiʿī, **no matter how sound or rational a matter may appear**, it cannot be the basis for legislation unless it is grounded in an authentic *sharʿī* proof.

This position is fully consistent with his methodological principle of **restricting the sources of legislation** to:

- the Qur'an,
- the Sunnah,

- *ijmāʿ* (consensus),
- and *qiyās* (analogy).

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2. Conditional Acceptance with Strict Regulations

This position is represented by the **Mālekī school**, the majority of the **Ḥanbalīs**, and some scholars from the **Ḥanafī** tradition. They permitted invoking *maṣlaḥah mursalah*, but **only under very strict conditions**, such as:

- The benefit must be **real**, not speculative.
- It must be **public**, not private.
- It must not **contradict any explicit text or consensus**.

Imām al-Qarāfī (Mālekī) stated:
"What is deemed suitable (*munāsib*) is that which ensures the realization of a benefit or the prevention of harm."
Therefore, if a *maṣlaḥah* meets these conditions and aligns with the broader aims of the *sharīʿah*, it may be accepted.
Still, **a fundamental debate remains**: Should *maṣlaḥah mursalah* be considered an **independent source of law**? Or is it actually **subsumed** under other already recognized legal principles—such as the doctrine of necessity (*ḍarūrah*) or the generalities of the Qur'an and Sunnah?
Many rigorous Mālekī scholars hold the latter view. They argue that *maṣlaḥah mursalah* is not an **entirely new source**, but rather **a valid application of general principles to specific cases that lack a detailed textual ruling**. This understanding **greatly narrows** the scope of such usage. Imām al-Shāṭibī (Mālekī) made this position clear when he said: "*Istislāḥ* (the invocation of benefit) is only valid when it falls within the established aims of the Lawgiver (*maqāṣid al-shāriʿ*)."

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3. Practical Use Without Clear Theoretical Foundation

This orientation is attributed to **some of the early Ḥanafīs**, who occasionally engaged in forms of *istihsān* or invoked public interests (*maṣāliḥ*) as **exceptions** without establishing them as independent, formally theorized sources of legislation.
One can cite certain legal practices—such as those reported from **Abū Ḥanīfah**—where he issued rulings based on pragmatic considerations of public interest. An example is:

- Accepting the testimony of someone **whose uprightness was not independently verified**, based merely on apparent behavior, in certain *ḥuqūq* cases (e.g., matters of honor or public trust).

Such instances appear to reflect a concern for the public good, **despite the absence of a direct textual proof** supporting the ruling in question.

The Difference Between a Sharʿī "Suitable Cause" (*al-munāsib*) and Modern Claims of Rational Benefit (*maṣlaḥah*)

Shireen Bernard, writing for the RAND Corporation—an institution supported by the U.S. State Department—in her book *Civil Democratic Islam*, stated: "There are other solutions as well, such as applying modernity's principle of *maṣlaḥah* or public interest, which dates back to the 13th-century reformist Muslim jurists, as something that was thought could override or even abrogate the Qur'an itself."

After having surveyed the concept of *maṣlaḥah mursalah* within the inherited framework of classical legal theory, we now turn to the second part of this chapter: **a comparison between the disciplined, Sharʿī understanding of public interest and what some modern thinkers claim to be "benefit" based solely on their unaided reason.** The aim is to clarify that there is a **vast gulf between the two**.

The "Suitable" Description Recognized by the Sharīʿah (*al-maṣlaḥah al-muʿtabarah*)

While examining the epistemic pathways (*masālik*) for establishing legal causality (*ʿillah*) in analogical reasoning (*qiyās*), some classical usūl scholars formulated the concept of *al-munāsib* (the "suitable cause" or relevant factor). This refers to a **visible and consistent attribute** which the Lawgiver (*al-shāriʿ*) designates as the *ʿillah* for a ruling because it **achieves a sought benefit or averts a recognized harm**.

Many legal theorists held that the "suitability" (*munāsabah*) between the ruling and its cause constitutes a valid indicator (*dalīl*) for inferring the ʿillah. This was a gateway for discussing *maṣāliḥ mursalah*, and it falls under the broader research into analogical causality and its indicators.

Imām al-Qarāfī enumerated eight such indicators:

- Textual proof (naṣṣ)
- Allusion (ishārah)
- Suitability (munāsabah)
- Resemblance (shabah)
- Correlation (dawrān)
- Elimination (sabr)
- Constancy (ṭard)
- Refinement of the basis (tanqīḥ al-manāṭ)

Al-Rāzī in *al-Maḥṣūl* added two more: *ijmāʿ* and classification (*taqsīm*), bringing them to ten.

Many jurists considered *munāsabah* one of the valid epistemic pathways (*masālik*) for determining legal causation.

So, what exactly is *munāsib*? Or: what is the "suitable cause"?

Imām Ibn al-Ḥājib defined it as:

"A visible and consistent attribute, through which the intellect discerns—via the assignment of a ruling to it—the realization of a benefit or the avoidance of a harm."

So, the condition is that the description must be:

- **Visible** (not hidden)
- **Consistent** (not variable)
- And **the intellect must perceive that assigning a ruling to it achieves a benefit recognized by the Sharīʿah** or averts a harm it rejects.

Al-Shawkānī wrote:

"Suitability (*munāsabah*) is the backbone of *Kitāb al-Qiyās* and the locus of its obscurity and clarity. Extracting it is known as *takhrīj al-manāṭ* (deriving the causative link)."

He reports from *al-Maḥṣūl* that there are two definitions of the suitable cause:

1. That which leads to what suits a human being's well-being and preservation. This can also be expressed as: the acquisition of benefit or the prevention of harm.
2. That which accords with the behavior of rational agents in customary practice. For instance, pearls that are strung together are said to "suit" each other aesthetically.

Some scholars defined *al-munāsib* as: "That which, if presented to the intellect, would be accepted." This was said by Abū Zayd al-Dabbūsī and also affirmed by al-Shāṭibī.

Ibn Qudāmah in *Rawḍat al-Nāẓir* stated: "The suitable cause is the attribute which, when the ruling is applied to it, achieves a benefit." In *Uṣūl al-Shāshī*, an example is given: "If we see a person giving a dirham to a poor man, we overwhelmingly presume that this was to relieve his need and gain reward. Hence, relieving need and gaining reward become the suitable attributes (*munāsib*) for giving, and therefore, the cause (*ʿillah*)."
Saif al-Dīn al-Āmidī gave what he considered the most precise definition: "It is a visible and consistent attribute, from whose alignment with the ruling results something suitable to be intended by the Lawgiver in instituting that ruling."
This definition **explicitly removes any role of human reason in determining the suitable cause**. Thus, it avoids legislating by intellect.

The Levels of Suitable Causes

Usūl scholars categorized *munāsibāt* in analogical reasoning into levels:

- **1. Effective suitability (*munāsib muʾaththir*)** Confirmed by text or consensus as the legal cause for a benefit.
  Example: Wealth (*ghināʾ*) as a cause for zakāh, since it realizes the benefit of enriching the poor without undue burden on the wealthy. This is based on **text**, not independent reasoning.
  → This kind of suitability is recognized through **Sharʿī indication**, not by pure intellect.
- **2. Compatible suitability (*munāsib mulāʾim*)**
  Not explicitly mentioned in texts but **harmonizes with general Sharʿī principles**.
  Example: Intoxicating effect (*sukr*) as the underlying rationale for prohibiting wine, since many texts speak against its effects. But note: wine was **not prohibited solely because of intoxication**, otherwise its small non-intoxicating quantity would not have been prohibited. Thus, the actual *ʿillah* is more encompassing.
- **3. Unrestricted suitability (*munāsib mursal*)**
  Lacks both specific textual support and universal legal principles—yet is not contradicted by revelation either.
  → This is **precisely what is meant by *maṣlaḥah mursalah***.
- **4. Rejected suitability (*munāsib mulghā*)**
  A cause which seems rationally suitable, yet is **explicitly invalidated by revelation**.
  Example: Claiming that women are barred from leadership roles due to "inferior intellect"—an idea **invalidated** by examples of women in key roles (e.g., ʿĀʾishah's military leadership at al-Jamal, or ʿUmar's appointment of al-Shifāʾ as *muḥtasibah* of the market). → The Sharīʿah **did not legislate on this basis**, and it is thus a **false or imagined benefit**.

Summary Insight

Scholars have stated: "*Al-munāsib* is essentially *maṣlaḥah*." That is, the cause behind any ruling is a type of benefit. The intellect perceives as "suitable" only what it perceives as beneficial.
Hence, the various *ʿilal* (causative factors) used in legislation are all grounded in benefit. But importantly:

- **Every command from the Lawgiver implies a benefit**,
- **Every prohibition implies a harm**,
- And **averting harm is itself a benefit**.

Therefore, benefit (*maṣlaḥah*) is always **present** in *Sharʿī* rulings—whether the human mind perceives it or not.

Final Distinction

The **suitable cause recognized in the Sharīʿah** is ultimately a *Sharʿī interest*—**one that is affirmed by revelation**, even if sound intellect agrees with it. In contrast, **modern rational interests** advocated by some contemporary thinkers **often lack these methodological constraints**. They are judged by **human thought shaped by culture or desire**, and may be:

- Illusory,
- Partial,
- Or directly contradictory to the true interests defined by the Sharīʿah.

"Interest" (Maṣlaḥah) According to Modern Rationalist Currents

In the modern era, under the influence of Western modernity, some Muslim thinkers have promoted the view that the Sharīʿah came primarily to achieve the interests (*maṣāliḥ*) of people. According to them, whatever reason deems beneficial is necessarily the law of God. Their often-repeated slogan is: *"Wherever there is benefit, there is the law of God."*

At first glance, this statement may seem appealing. Its proponents may try to trap critics by asking a reverse rhetorical question: "If this is not true, are you saying that some rulings came to repel benefit and achieve harm?" But this is a fallacious argument. A deeper inspection reveals a serious and dangerous deviation in their understanding and application, far from the methodology of the scholars of the ummah. In fact, this statement directly contradicts the Qur'an itself.

Islamic scholars who do accept the principle of achieving benefits and averting harms as foundational also state clearly: *"The Sharīʿah is founded on bringing about benefits and warding off harms."* The five universal objectives of the Sharīʿah (preservation of religion, life, intellect, progeny, and wealth) are clear evidence that Islamic law takes the interests of people seriously. However, there is a vast difference between saying **"the Sharīʿah achieves benefits"** and **making the concept of benefit as defined by reason alone the source of legislation**, without deriving it from the detailed or general texts of revelation.

The rationalist reformers—starting with the schools of Muhammad ʿAbduh and al-Afghānī, and continuing with some contemporary figures—fell into several methodological errors:

- They believed that every Sharʿī ruling must be intellectually justified by a manifest benefit. If such benefit was not evident to them, they argued for modifying or suspending the ruling.
- They expanded the definition of *maṣlaḥah* to include anything modern reason deemed useful, often under Western civilizational influence—even if it contradicted textual evidence or higher Sharʿī interests.
- They gave the intellect authority to prioritize worldly benefit over textual evidence in cases of conflict, under the claim that the goal of religion is to achieve happiness in this life. They ignored the fact that **true happiness lies in pleasing God—even if it contradicts people's desires.**

Let us examine a few real-world examples that illustrate these critical differences:

1. **In Sharīʿah**, the hadd (prescribed punishment) for theft is cutting off the hand. This serves a great benefit for society—protecting property and deterring theft. To the unaided mind, this may seem like a harm inflicted upon the thief. But God, the All-Wise, knew that the benefit of public security outweighs the cost. This severe punishment is, in fact, more merciful for the community than rampant theft. Meanwhile, some rationalists saw this punishment as harsh and contrary to modern human rights standards, thus **contradicting revelation under the guise of benefit**. But is this really a benefit—or merely a reflection of Western cultural norms?

God clarified this very issue in the context of the punishment for adultery: *"Let not compassion for them prevent you from applying the religion of Allah..."* [Qur'an 24:2]

This is to prevent anyone from suspending the ḥadd out of misplaced sympathy.

2. **Another example: The prohibition of usury (ribā)** in the Qur'an is absolute and grounded in the severe economic and social harms it causes: exploitation of the poor, unjust enrichment, and the concentration of wealth. Rationalists like Muhammad ʿAbduh and Rashīd Riḍā, however, claimed that banks are essential to the economy and that interest is necessary for development. So they permitted "minor" ribā under the name of economic benefit. The consequences are visible today: banking tyranny, debt crises, and the injustice of the interest-based global system. Their human reason approved what God had clearly prohibited, and thus **they fell into greater corruption.** Shaykh Aḥmad Shākir strongly warned against ʿAbduh's fatwa, emphasizing the grave consequences of misusing terminology to distort definitive Sharʿī rulings.
3. **A popular slogan** among these reformists is: *"Rulings change with changing times and places."* Using this, they argue:
    - Inheritance laws should be revised to ensure gender equality.
    - Modern economies require interest-based banking; only excessive interest should be forbidden.
    - Ḥudūd (prescribed punishments) like capital punishment should be repealed because they are no longer "suitable."

They justify these alterations under the flexible pretext of changing contexts. Here lies the danger.

Clarifying the Usūlī Position

First, the well-known principle "rulings change with time" has been misunderstood.

- The original intent of this maxim in classical legal theory was limited to **custom-based matters**, such as local pricing, oaths, and social contracts where customary practice is explicitly referenced in the texts.
- It was **never** intended to justify altering fixed Sharʿī rulings derived from clear texts.

Second, scholars responded to this misuse:

- Sharʿī rulings are tied to the command of the Lawgiver, not to ever-changing realities. Rulings stem from **established causes**, not from fluctuating contexts.
- Yes, applying a ruling in a new context (e.g., changes in fasting, divorce, or business practices) is a process called **taḥqīq al-manāṭ**—not changing the ruling itself.

Third, there is a distinction between changing a ruling and changing a fatwa:

- Rulings are universal and fixed; fatwas are specific applications of these rulings.
- A change in fatwa reflects a change in the situation—not a change in the legal principle.
- If a scholar's judgment changes due to new evidence, it is a matter of ijtihād—not of changing Sharīʿah by time and place.

Fourth, Sharʿī rulings are valid in all times and places:

- The Qur'an was revealed in a language rich in general principles that allow for application to new cases.
- New realities can be addressed through consistent usūlī methodology, **not** by importing foreign elements that replace divine guidance.

Fifth, the threat posed by this principle:

- Saying time and place override rulings implies the revelation was time-bound.
- This opens the door for reason to become the sole legislator—contrary to the essence of Islam, which is **that judgment belongs to God alone.**
- To replace divine law with modern rational benefit is to **substitute Western legislation for the Sharīʿah.**

Summary Principles

- Sharʿī rulings are fixed because they are God's speech concerning human actions. What changes is the reality onto which the ruling is applied.
- The misinterpretation of *"rulings change with time"* nullifies the authority of revelation and substitutes human reason and desire in place of regulated inference.
- The Sharīʿah is timeless—not because it changes, but because it was revealed in a universal framework that can address evolving conditions without distortion.

4. **Their slogan: "Wherever there is benefit, there is the Sharīʿah."** If the benefit is genuinely a **Sharʿī-recognized benefit**, affirmed by suitable evidence or sound principles, then yes—the Sharīʿah affirms it. For example, beneficial knowledge, fulfilling people's needs, and organized civic life are all supported by Sharʿī texts.

But if the claimed benefit is merely a worldly gain that contradicts divine commands, **how can it be claimed to be God's law?** Suppose someone says: "It is in our national interest to form alliances with unbelieving nations, even if this leads to fighting other Muslims." This is plainly false: the Sharīʿah strictly forbids allying with disbelievers against Muslims, regardless of how "beneficial" it may appear.

Some even issued fatwas allowing alliances with occupying foreign powers against Muslim states under the guise of "national interest." This is not from Sharīʿah, it reflects **a lack of loyalty and disavowal rooted in divine commands.**

Final Summary:

- The interest recognized in Sharīʿah is what constitutes real benefit for creation, and it is identified through revelation—either explicitly or through validated principles like effective suitability (*al-munāsib al-muʾaththir*).
- Granting unrestricted authority to human reason to define benefit without reference to the Qur'an and Sunnah is a methodological and theological deviation. It reduces the religion from divine revelation to subjective human speculation.

This is precisely what the Prophet ﷺ warned about: *"Beware of newly invented matters. Every innovation is misguidance."* (Sunan Abū Dāwūd, authentic). What is innovation (*bidʿah*)? Is it not legislating based on opinions and desires? Is it not implying that the Prophet ﷺ failed to convey the complete religion?

Just as there are heretical innovations in belief and worship, so too have innovations emerged in law and governance. These are promoted in our time under names like "Fiqh al-Wāqiʿ" or "Contemporary Jurisprudence," but in truth they are **arbitrary human desires cloaked in attractive slogans.**

One final example: under the guise of benefit and personal rights, some—under Western liberal influence—have begun advocating the decriminalization of sins like drinking alcohol, claiming it harms only the individual. Others went further, promoting sexual deviance as an expression of individual freedom, claiming that a person's "benefit" is defined by their desires. This utilitarian logic is being used in the West to legalize vice and is now advocated by hypocrites and secularists in the Muslim world. But every Muslim knows this is a grave deviation. The Sharīʿah came to protect public morality and natural human disposition (fiṭrah).

The Qur'an states: *"He makes lawful for them the good things and forbids them the vile."* (7:157)

What God has forbidden is definitively vile, even if some perceive it as pleasurable or profitable. Alcohol, drugs, prostitution, and gambling may enrich their purveyors today—but in the Sharʿī balance of true benefit, they are destructive evils that corrode individuals and societies.

Conclusion

True Sharʿī benefit never contradicts revelation. It exists where the texts or general purposes of Sharīʿah affirm it through sound inference.

Subjective benefit defined by human desire and culture must be evaluated by the Sharʿī scale—accepted or rejected accordingly.

When benefits appear to conflict, or compete with perceived harms, **they must be prioritized based on the Sharʿī scale**, not by human preferences.

Reason is a tool for examination and weighing—but **only within the framework of revelation**.

This was the methodology of the scholars of Islam. The alternative approach, which sets reason as a judge over revelation in the name of benefit, is rejected—because it surrenders the religion to human ignorance and bias, and denies the divine wisdom behind God's law.

Chapter Three: The Evolution of the Concept of Maṣlaḥah in Jurisprudence and the Danger of Its Modern Use in Minority Fiqh, Balancing, and Reality

Executive Summary of Chapter Three:

Maṣlaḥah in the Islamic Paradigm and Its Conditions for Consideration

This chapter addresses a highly important topic in Islamic legal theory: the concept of *maṣlaḥah* (benefit or public interest). Although it is one of the tools of ijtihād (independent reasoning), it is also among the most misused concepts by certain modern trends, leading to significant intellectual and jurisprudential deviation.

The author first clarifies that in the Islamic worldview, *maṣlaḥah* is not an independent source of legislation but is subordinate to the revealed texts. It must be derived from the principles and evidences of the Sharia and cannot serve as an independent criterion by which the text is judged.

The chapter then distinguishes between the *legitimate Sharʿī maṣlaḥah*—one that aligns with the objectives of Sharia and follows its conditions—and the absolute rational *maṣlaḥah* adopted by some modern thinkers to bypass or esoterically reinterpret clear scriptural texts to support personal visions.

The author discusses precise legal definitions of *maṣlaḥah* and outlines its conditions of validity: it must not contradict any revealed text, must be real and not imagined, must be general and not private, and must not open a door to greater corruption.

The chapter presents historical examples of deviation where *maṣlaḥah* was left unchecked, such as al-Ṭūfī's preference of benefit over text, and certain modern jurists who permitted usury or resorted to man-made laws under the pretext of achieving benefit.

In conclusion, the author asserts that true benefit lies in implementing Sharia, not suspending it, and that God's revealed law knows human interests better than their limited intellects. Any attempt to make *maṣlaḥah* a judge over the text ultimately leads to the secularization and distortion of the religion.

Chapter Content:

The concept of *maṣlaḥah* underwent significant development in its use throughout Islamic legal history. In the golden age of jurisprudence, it was closely regulated within the framework of Sharia and raised little controversy. Scholars employed it within the domain of qiyās (analogical reasoning) in matters without explicit texts or to fulfill overarching objectives of the Sharia, without ever violating a clear text—as seen in the Mālekī school, for example.

However, over time, particularly during the eras of stagnation and subsequent exposure to Western modernity, new and expanded readings of *maṣlaḥah* emerged. These sought unprecedented applications, especially within what is now called "Fiqh al-Aqallīyāt" (minority jurisprudence), "Fiqh al-Muwāzanāt" (balancing of interests), and "Fiqh al-Wāqiʿ" (contextual jurisprudence). In this chapter, we will trace the evolution of this concept and analyze the risks of modern over-expansion in its application beyond the constraints of Sharia, highlighting specific examples.

Maṣlaḥah in Classical Jurisprudence: From Strict Regulation to Late Expansion

As previously discussed, the early imams—Abū Ḥanīfa, Mālek, al-Shāfiʿī, and Aḥmad—though differing in methodology, consistently upheld the primacy of textual evidence. Reason and opinion were used to apply and understand the text—not to override it. Indeed, the Mālekīs referred to certain forms of reasoning as "maṣāliḥ mursalah" (unbound interests), the Ḥanafīs used "istiḥsān" (juristic preference) to depart from clear analogies for stronger evidence or broader utility, and the Shāfiʿīs and Ḥanbalīs employed methods like "refined cause identification" or "analogy with eliminated difference."

Despite terminological differences, all schools agreed that *maṣlaḥah* must be regulated by Sharʿī principles and that entirely novel rulings lacking support in texts, consensus, or sound analogy were impermissible.

During the later periods of active ijtihād, some limited expansions occurred:

- Certain late Ḥanafīs expanded *istiḥsān* slightly, framing it as the prioritization of a stronger legal principle over strict analogy.
- Some later Mālekīs, like al-Ṭūfī (d. 716 AH), attempted to grant *maṣlaḥah* special precedence in cases of conflict, famously stating: "If *maṣlaḥah* conflicts with a text, *maṣlaḥah* takes precedence in transactions." He, however, restricted this to texts of probabilistic meaning and cases involving clear, overwhelming benefits. Nonetheless, the scholarly majority rejected this formulation as dangerously open-ended.
- Al-Shāṭibī (d. 790 AH), in his seminal work *al-Muwāfaqāt*, provided a brilliant theoretical framework for the *maqāṣid al-sharīʿah* (objectives of Sharia). He emphasized that real interests are confined to the five

essentials and their complements. He famously declared: “True benefit is that which aligns with the will of the Lawgiver—man has no benefit except in obeying God.”

Up until the end of the 9th century AH, *maṣlaḥah* remained within scholarly constraints and was not invoked to justify undermining definitive texts or to authorize egregious violations.

Then came the era of decline and colonization, during which the influence of Sharia diminished in public life. Some scholars, facing harsh realities, began issuing fatwas accommodating "interests" to alleviate hardship. This marked the beginning of expansion:

- Fatwas appeared temporarily suspending certain ḥudūd punishments due to dire conditions, such as the famous famine during ʿUmar’s caliphate when he suspended amputation for theft out of necessity.
- The legal maxim "necessities permit prohibitions" was used—at times excessively—during colonial times to justify accommodations under claims of necessity or greater harm prevention.

However, the real turning point occurred in the modern era, with the rise of so-called reformist and renewalist movements in the 19th and 20th centuries. In their struggle to confront underdevelopment and Western dominance, some scholars proposed a new approach: reinterpreting Sharia through its higher objectives rather than being bound by its specific textual appearances—supposedly to make it suitable for the modern age. Here, *maṣlaḥah* and *maqāṣid* became central.

This trend was led by figures like Jamāl al-Dīn al-Afghānī (d. 1897), his student Muhammad ʿAbduh (d. 1905), Rashīd Riḍā, and others. They promoted the slogan: “Islam is the religion of benefit,” reviving al-Ṭūfī’s thesis that if *maṣlaḥah* conflicts with a text, the *maṣlaḥah* should prevail. But they took it even further:

- Muhammad ʿAbduh, for instance, applied *maṣlaḥah* to nearly all of his legal opinions, even if they contradicted established juristic consensus. He modified endowment laws in Egypt under claims of economic development (e.g., permitting the substitution of waqf assets and non-compliance with the donor’s conditions when deemed beneficial by state authorities).
- He also permitted interest from government savings institutions under the justification that it served small depositors and stimulated economic growth. This ruling was widely viewed as legitimizing usury. ʿAbduh argued that only exploitative usury (usury in multiples) was prohibited in the texts, while “moderate” bank interest was a form of mutual financial cooperation.

Here we see a qualitative shift: *maṣlaḥah* in this new thought now meant any direct material benefit—even if it contradicted the clear text—on the assumption that texts could be historically contextualized and that religion must evolve with people’s changing needs. *Maqāṣid al-sharīʿah* was revived and reinterpreted in this context—not as a guide to understanding fixed laws, but as a license to revise them altogether.

"Refutation of Minority Jurisprudence and Its Dangers to Muslim Minorities"

Executive Summary:

This section provides a critical analysis of contemporary minority jurisprudence (*fiqh al-aqallīyāt*), arguing that it does not represent an authentic extension of Islamic legal tradition. Instead, it emerges from a modern rationalist school influenced by Western norms, aiming to adapt Sharīʿa to Western realities rather than vice versa. The author explains how this jurisprudence severs the connection between Islamic rulings and the theological framework of Islam, justifying recourse to man-made laws, political participation in non-Sharīʿa systems, legalizing usury, and compromising Islamic identity in the name of public interest or coexistence.

The section shows that this "jurisprudence" lacks any firm usūlī grounding and is built upon a pragmatic utilitarian methodology that prioritizes perceived interests over textual revelation. It neutralizes the definitive meanings of sacred texts under the pretense of "interpreting reality," leading to a gradual separation between Muslims and their creedal identity. The author links this school to the intellectual legacy of Muhammad ʿAbduh and Jamāl al-Dīn al-Afghānī, and presents several contemporary examples of fatwas that contravene decisive texts under the banner of "maṣlaḥah" (interest).

It concludes with a warning about the repercussions of this jurisprudence on Islamic identity and the future of Muslims in the West, arguing that it ultimately dissolves doctrinal specificity into liberal integrationism.

Key Themes: • The Methodological Roots of Minority Jurisprudence: The author traces its origins to the rationalist modernist school beginning with ʿAbduh and Rashīd Riḍā, which gave precedence to interest over text and opened the door to revising categorical rulings in the name of leniency. This led to a new legal school detached from classical Islamic methodology.

• Manipulating Sacred Texts Under the Guise of Interest: The section highlights examples of contemporary fatwas permitting explicitly prohibited actions such as: o Working in interest-based banks, o Taking out usurious loans to purchase homes, o Laxity regarding the obligation of ḥijāb, o Legal justifications for equal inheritance between men and women.

• Undermining Sharʿī Authority in the Name of "Jurisprudence of Coexistence": The author shows that this model, under the pretext of coexistence, separates the Muslim from the Sharʿī frame of reference by creating a distinction between “rulings for Muslims in Dār al-Islām” and “rulings for Muslims in the West.” This phenomenon reproduces the notion of “cultural Islam,” where religion becomes a set of personal rituals devoid of legislative or political substance.

• The Problematic Theory of “Abode of Daʿwah” vs. “Abode of Islam”: The author refutes the notion, promoted by minority jurisprudence proponents, that Muslims in the West reside in a special category requiring suspended Sharʿī obligations. He affirms that this innovation ultimately secularizes Islam by rendering its validity contingent upon context, turning it into a flexible cultural identity rather than a divine legal system.

• Catastrophic Consequences: The author outlines the damaging outcomes of this jurisprudence: o Gradual detachment from Sharīʿa, o Intellectual and legal subordination to Western norms, o Dilution of Islamic identity, o Undermining youth trust in the Sharīʿa.

Conclusion: Minority jurisprudence is not a sound, matured form of ijtihād. Rather, it is a methodological deviation cloaked in the appearance of fiqh. Its essence is the issuance of fatwas aligned with Western interests and cultural pressures, posing a threat to the survival of Islam in the West from within.

Methodological Introduction: The Dangers of Minority Jurisprudence and the Breakdown of Usulī Discipline:

- **A brief overview of the concept of "Minority Jurisprudence."**
- **Affirmation that this study does not target the realities of minority life or the need for ease but rather critiques a methodology that has bypassed scriptural revelation in favor of rationalistic reasoning.**
- **A clarification of the difference between *shar'ī* (scripturally grounded) necessity and *'aqlī* (rational/social) necessity.**
- **A presentation of the conditions for valid unrestricted *maṣlaḥah* (public interest) in usul al-fiqh, and a critique of how these conditions have been transgressed.**

Minority Jurisprudence Between Shar'ī Necessity and Methodological Compromise

At the close of the twentieth century—coinciding with the growing presence of Muslim communities in Western societies—there emerged a pressing call to develop what came to be known as *"Fiqh al-Aqalliyyāt"* (Minority Jurisprudence): a legal-theoretical endeavor aiming to adapt Islamic rulings to the context of Muslims living in non-Islamic societies. Undoubtedly, the circumstances of Muslim minorities pose distinct legal challenges, ranging from engagement with secular legal systems to complex matters of personal status such as marriage, legal arbitration, dietary laws, financial transactions, and insurance.

Yet the practical implementation of this trend revealed a deep schism in methodological orientation:

- On one side, sincere scholars strove to contain concessions and legal dispensations within a strict usulī (principled) framework, without infringing upon the fixed and categorical rulings of the religion.
- On the other side, fatwas were issued by individuals who can only be described as *pseudo-jurists*—those who expanded the meanings of *maslaha* (public interest), *maqāṣid* (legal objectives), and *"avoiding the greater of two harms"* in an unrestrained and unprincipled manner. They wielded these tools to override even the most firmly established legal rulings using the flimsiest of justifications.

This schism widened to the point of rupture. Under the banners of *ease* and *realism*, alien ideas took root—ideas that elevated purely rational, subjective interests (devoid of any grounding in revelation) to the level of legislative authority. The desired outcome became the driver of the legal process itself. Thus was born a "jurisprudence" tailored to justify relaxation in categorical rulings (such as those regarding marriage, usury, or legal arbitration) under the pretense of accommodating minority conditions. This was done by reducing the comprehensive system of the Sharia to a reactive framework for managing Western reality—an effort to align Islamic rulings with Western legal norms and integrate Muslim minorities into Western societies, even if that required reshaping the Sharia itself to fit this purpose.

Accordingly, this study critically examines the fundamental contradiction between many of the fatwas issued under the umbrella of Minority Jurisprudence and the categorical scriptural evidences. It exposes:

1. The mechanisms through which methodical compromises are introduced in matters of marriage, financial transactions, and engagement with secular legal systems.
2. The transformation of *maslaha* from a well-regulated Shar'ī principle into a purely rational justification used to abrogate fixed rulings.
3. The actors, institutions, and model fatwas that embodied this deviation—turning social integration and Western social pressure into de facto abrogators of revelation.

Thus, this study is driven by a central question:

How did "rational interest"—in some expressions of Minority Jurisprudence—become a tool for dismantling established Shar'ī principles, rather than a framework for applying them within complex realities?

From Usulī Discipline to Methodological Disintegration

One of the defining features of the Islamic discipline of *usul al-fiqh* (principles of jurisprudence) is its rigor and rootedness in revelation. It is a science governed by structured methodologies of reasoning and inference, built on systematic principles derived through inductive analysis (*istiqrā'*), analogical reasoning (*qiyās*), and interpretive rigor, all framed by sacred sources. Over centuries, these foundations were refined and codified to ensure that the process of legal derivation remains disciplined, objective, and firmly anchored in revealed guidance—not in personal whims or unbounded rational speculation.

Usul al-fiqh is not a set of abstract tools—it is a coherent, integrated system of principles, measures, and methods designed to safeguard the integrity of *ijtihād* (independent legal reasoning). It ensures that the outcomes of legal reasoning align with the overarching structure of revelation, Islamic theology, and legal order. It revolves around immutable parameters, such as grounding all rulings in revelation, forbidding any purely rational legislation, and engaging with scriptural evidence in a methodologically sound way that ties rulings to the specific realities they are meant to govern. These parameters ensure that *ijtihād* operates in a way that fulfills its purpose.

Thus, every school of Islamic law was not merely a collection of scattered fatwas, nor were its principles arbitrary or eclectic. Each school was a structured intellectual tradition with a coherent usulī methodology. Its rulings reflected its interpretive principles and its system for engaging with texts, ordering evidences, and determining legal precedence.

Islamic epistemology—as explained in the book *"Epistemology and Methodologies of Thinking"*—was established on the foundational principle of *epistemic discipline*. From the dawn of Islam, reason was mandated by revelation not as a means to undermine or select from texts, but to understand and apply them within strict methodological boundaries. Therefore, one of the most alarming developments in modern legal discourse is the emergence of "Minority Jurisprudence" in some of its expressions, as a blatant example of the collapse of usulī discipline and the abandonment of the very principles that safeguard valid legal reasoning.

True Islamic jurisprudence—built upon usul al-fiqh—relies on authoritative sources: the Qur'an, the Sunnah, consensus (*ijmāʿ*), and analogy (*qiyās*), as well as overarching juristic maxims (*qawāʿid kulliyyah*) that guide derivation. Within this framework exists the concept of *maṣlaḥa mursala* (unrestricted public interest), which is only valid under strict conditions:

1. It must be real, not imaginary.
2. It must be general, not particular.
3. It must be consistent with the Sharīʿah—not contradicting any definitive text, consensus, or established principle.
4. Its validity must be supported by detailed scriptural evidence.

The primary problem with most applications of "Minority Jurisprudence" is that it substitutes this disciplined Shar'ī concept of public interest with a purely rationalistic and circumstantial construct—one that is drawn from Western social realities and pressures, with no binding link to scriptural sources or to the established methodologies of derivation in usul al-fiqh. The result has been deeply troubling methodological concessions.

Manifestations of Methodological Breakdown in Minority Jurisprudence

1. Abandonment of the Conditions for Shar'ī Maslaha

Scholars such as al-Ghazālī and al-Shāṭibī delineated strict conditions for recognizing public interest as a legitimate basis for legal rulings: it must be real, general, scripturally validated, and not in conflict with definitive texts. They warned against basing legislation on mere whims. In contrast, some applications of Minority Jurisprudence disregard these conditions and elevate pragmatic, worldly considerations—unsupported by detailed evidence—to the level of legislative principles. These are often shaped by temporary circumstances or political and social pressures.

2. Fragmentary Borrowing from Madhhabs Without Respect for Foundational Methodologies

As emphasized in *The Miracle of Islamic Legislation*, the danger of picking and choosing between legal schools lies in the fact that every individual ruling is rooted in an integrated usulī framework. For example, if one adopts Imam al-Shāfiʿī's view that touching a woman nullifies wudu (ritual ablution), and then adopts Abū Ḥanīfah's opinion that excessive movement invalidates prayer, one is combining fundamentally incompatible premises. This dismantles the usulī foundation upon which both rulings rest. Each school has a distinct methodology for engaging with evidence, and mixing these leads to methodological collapse and a subjective, desire-driven approach to lawmaking. Usulī coherence must always be maintained.

3. Abandoning Ijtihad for Patchwork and Selective Quoting

Authentic *ijtihād* does not consist of cherry-picking isolated fatwas from old juristic texts without accounting for the context in which they were issued or the usulī principles underpinning them. Yet some figures issuing fatwas under the banner of Minority Jurisprudence invoke anomalous opinions found in obscure legal texts without possessing the intellectual tools of *ijtihād* or undertaking a systematic usulī study of the issue in question.

An example: In his memoir *"Political Memoirs"* (p. 299, Egyptian General Book Organization, 1985), Muhammad ʿAlī ʿUlūbah (former Egyptian Minister of Justice) recounts that Shaykh al-Marāghī (Grand Shaykh of al-Azhar 1928–1930 and 1935–1945) once told lawmakers, *"Bring me the Western law you wish to implement, and I will tell you which fiqh school supports it."*

- **Historical context**: This occurred during the British occupation of Egypt, when lawmakers imported Western codes (especially French civil law).
- **al-Marāghī's aim**: He sought to reduce dependence on the West by providing nominal Islamic justification for these laws by:
    - Finding superficial resemblances between them and minority fiqh opinions.
    - Relying on the maxim: *"Legal rulings change with changing times."*
- **Scholarly critique**: Scholars like al-Ṭāhir ibn ʿĀshūr in *"Maqāṣid al-Sharīʿa"* (p. 367) described this as a "patchwork method" that begins with the secular law and then seeks a fiqh-based rationale for it. Ibn ʿĀshūr stated: *"It is not valid to make reality the foundation and then subject the texts to it; rather, the texts are the foundation."*

4. Using Maqāṣid as a Pretext for Overriding Texts

The concept of *maqāṣid* (legal objectives) has been distorted from its role as a tool for understanding texts into a license for abandoning them. It is now invoked to justify ignoring categorical rulings, under the guise of serving "interests" or alleviating "hardship," despite the consensus of usul scholars that maqāṣid may only be invoked in the absence of textual evidence—and never to contradict it.

5. Deviation in Applying Necessity and Hardship

Minority Jurisprudence has expanded the concept of *ḍarūrah* (necessity) beyond recognition. Even a *doubtful necessity* is now used to justify the permissibility of usury, the uncovering of private parts, or abandoning *walāʾ and barāʾ* (allegiance and disavowal). This represents a dangerous departure from the stringent criteria established in usul al-fiqh: that necessity must be real, certain, temporary, irremediable by other means, and strictly limited in scope.

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6. Conclusion

The practice of "Minority Jurisprudence"—as undertaken by certain actors—reveals a deep methodological crisis. It entails dismantling the usulī architecture that governs *ijtihād* and replacing it with circumstantial rationalism that ultimately undermines the immutable foundations of the faith. True renewal in fiqh does not require demolishing its

principles, but rather reactivating them with awareness—reading contemporary realities through the lens of the revealed texts, not reshaping the texts to conform to reality.

Practical Examples That Demonstrate the Danger of Building Upon Minority Jurisprudence

First Case Study: The Fatwa Permitting Interest-Based Loans to Purchase Homes or Cars

In the 1990s, several prominent fatwa-issuing bodies—such as the European Council for Fatwa and Research (ECFR), Dr. Yusuf al-Qaradawi, and the Fiqh Council of North America (FCNA) in 1999, among others—issued rulings permitting Muslims living in the West to take out interest-bearing loans to purchase homes. The justification was framed around necessity, civil integration, and public interest (maslahah), especially in light of high rental costs and the desire to avoid long-term financial harm. They invoked the concept of *"removing severe hardship."*

Official Position (Resolution 15/5, 2001):

"It is permissible for a Muslim residing in the West to take out an interest-based loan to purchase a home if the following conditions are met: (a) No Shar'i-compliant alternative is available. (b) The individual fears moral or religious harm to themselves or their family due to lack of homeownership. (c) The housing need is deemed a necessity, not a luxury." *(Source: ECFR Journal, Issue 8, p. 183)*

Contradiction with Sharia Evidences:

- Qur'an: "Allah has permitted trade and forbidden usury (riba)." (Al-Baqarah 2:275)
- Hadith: "Allah has cursed the one who consumes riba, the one who pays it..." *(Sahih Muslim)*

Dr. Yusuf al-Qaradawi argued in his book *Fiqh al-Aqalliyyat al-Muslima*:

"Necessity permits the forbidden. The inability to own a home in the West can lead to family disintegration and deviation of children, which constitutes a necessity permitting the use of riba under strict conditions."

ISNA's 2009 Conference:

"It is permissible for Muslims in America to take out riba-based loans for housing or cars when no alternative exists, as need is treated as necessity."

How Did "Rational Interest" Become a Mechanism to Nullify a Categorical Prohibition?

Methodological Mechanism:

1. **Expanding the Concept of "Necessity":**
    - Shar'i Necessity: Defined in jurisprudence as a condition where one's life, religion, intellect, or basic well-being is at risk unless the prohibited act is committed. The permissibility is limited and only extends to the extent of removing the harm.
    - Minority fatwas expanded this to include social or moral fears like "fear of deviation" or "difficulty paying rent," despite the fact that banks only approve loans for financially capable individuals. Thus, if one qualifies for a loan, they are by definition not in true need.
    - Furthermore, many Islamic financing alternatives were already available in Europe and North America prior to these fatwas. This raises the question: were these fatwas truly about necessity, or were they consumerist cover for facilitating access to interest-based contracts?
2. **Timeline Comparison: Emergence of Islamic Housing Finance vs. Interest-Based Fatwas**

A. Fatwas Permitting Interest-Based Loans:

- **1998–1999:** FCNA fatwa permitted taking out interest-bearing mortgages for first homes, citing lack of alternatives and necessity.
- **2001:** ECFR followed suit with a similar fatwa invoking "compelling necessity."

B. Availability of Islamic Financing Alternatives:

North America:

Year	Entity	Program	Description
1987	LARIBA (California)	Diminishing partnership	First model, limited scope
1997	IFSB (Oversight)	Home financing	Regulatory groundwork
2002	Guidance Residential	Musharakah Mutanaqisah	Covered 40 U.S. states by 2005
2003	UM Financial (Canada)	Murabaha & Ijarah	Focused on Canadian market

Europe:

Year	Entity	Country	Description
2004	Islamic Bank of Britain	UK	First Islamic mortgage provider in Europe
2006	Kuwait Finance House	UK	Entered market via subsidiary
2008	Qatar Investment	France	Launched Dar Al Tamweel

Contradiction in Applying "Necessity" Post-2005:

- **FCNA** continued permitting interest-based mortgages in underserved areas even after Islamic alternatives became widespread.
- **Islamic Bank of Britain** and other providers outright rejected riba-based options due to availability of alternatives.

Key Data on the Availability of Alternatives:

- By 2007, the UK Islamic mortgage market reached $1.5 billion (Bank of England).
- Guidance Residential in the U.S. financed over $7 billion from 2002–2010.

Conclusion: Institutionalizing Necessity as a Permanent License

1. The gap between 1998 and 2002 allowed riba-fatwas to become entrenched.
2. Fatwa-issuing bodies like FCNA did not revoke or substantially update their rulings even after practical alternatives became available.
3. Paradox: Islamic alternatives existed as early as 1987, preceding permissive fatwas. The proliferation of alternatives from 2002 onward undermines the validity of continuing such fatwas.

Field Data (2005–2010):

- Guidance Residential had 15 physical branches and digital reach to 90% of U.S. urban areas by 2005.
- Islamic Bank of Britain covered the UK via 8 branches and online platforms.
- Only 5% of U.S. Muslims lived in rural "underserved" areas, according to Pew (2009). Remote access (mail, e-signatures, legal proxies) was available for them.

Continued Reliance on Riba Despite Alternatives:

Survey Data:

Source	Year	Result
Zogby International	2010	70% of American Muslims bought homes with riba; 62% cited FCNA fatwa
George Washington Univ.	2017	64% admitted using riba; 48% said fatwas eased their conscience
U.S. Fed. Reserve	2020	58% of Muslim mortgages were riba-based; 76% in areas with alternatives
ECFR Report	2022	41% of Western European Muslims used riba loans; 33% cited "necessity" fatwas

Longitudinal Trends in the U.S.:

Period	Riba Usage	Islamic Alternatives

1999–2005	82%	4%
2006–2010	74%	18%
2011–2015	63%	29%
2016–2023	51%	42%

Motivations Behind Continued Riba Use (Hartford Institute, 2021):

Reason	%	Interview Examples
Trust in Fatwa Institutions	39%	"If FCNA permits it, they know best." (Michigan)
Exaggerated Difficulty	28%	"Islamic financing is too complex." (Avg. time: 18 days)
Cultural Conformism	19%	"Everyone here does it." (Paris)
Ignorance of Alternatives	14%	"Never heard of Islamic finance."

Blatant Contradictions:

- **UK (2023):** Despite 100% coverage of Islamic mortgage services, 38% of British Muslims still use riba.
- **Dr. Muhammad al-Hassan al-Deddo**: "Fatwas of permissibility created a religious cover... 60% of riba users are not in real necessity." *(Islamic Finance Conference, Paris 2013)*

Effect of Fatwa Revisions (Canada Case Study):

- **Pre-2015:** Riba usage at 71% (despite alternatives since 2003).
- **Post-2016:** Canadian Islamic Council revoked its permissive fatwa:
    - Riba usage dropped to 34% in 5 years.
    - Islamic financing transactions rose 300%.

Summary: What the Data Prove

1. Fatwas of permissibility created enduring religious cover even after their justification expired.
2. These fatwas delayed the adoption of alternatives by at least a decade.
3. They transformed the principle of necessity into a permanent license in the minds of many Muslims.

Shaykh Abdullah bin Bayyah (ECFR President): "A necessity fatwa is time-bound and expires when its justification disappears. That justification has vanished with the emergence of Islamic financing." *(Paris, 2013)*

Yet in 2017, the Union of Islamic Organizations in France published a booklet justifying interest-based mortgages—a textbook case of premeditated deviation.

Second Case Study: Altering the Rulings of Zakat

Issued Fatwa: It is permissible to give zakat funds to Western governments (for public projects) instead of giving them directly to poor Muslims.

Source: European Council for Fatwa and Research (ECFR), Decision 12/2003:

"Zakat may be allocated to social services (schools, hospitals) funded by Western states that benefit Muslims, as an alternative to direct distribution to the poor."

Contradiction with Shar'ī Texts:

- Qur'an: "Indeed, zakat is only for the poor and the needy..." (Al-Tawbah 9:60)
- Scholarly Consensus: Zakat is restricted to the eight categories mentioned in the verse. *(Ibn al-Mundhir, Al-Ijmāʿ, p. 51)*

Mechanism of Distortion: Turning a "rational interest" (improving the image of Muslims) into a "necessity" to justify altering the legally designated recipients of zakat.

Third Case Study: Equal Inheritance Between Males and Females

Issued Fatwa: It is permissible in the West to divide inheritance equally between men and women.
Source: "Minority Jurisprudence Symposium," Paris 2019, sponsored by the Union of Islamic Organizations in France (UOIF):
"If the Islamic rule of giving the male double the female share causes family discord or damages Islam's image, then equal division is permissible."
Contradiction with Shar'ī Texts:

- Qur'an: "Allah instructs you concerning your children: for the male, the share of two females." (Al-Nisā' 4:11)
- Scholarly Consensus: Changing the shares of inheritance is among the gravest major sins. *(Al-Nawawī, Al-Majmūʿ, 16/34)*

Mechanism of Distortion: Treating "social interest" (avoiding criticism from the West) as a valid basis for nullifying an explicit Qur'anic ruling.

Fourth Case Study: Endorsing Same-Sex Marriage Ceremonies

Issued Fatwa: A Muslim imam may participate in same-sex wedding ceremonies in Western churches.
Source: Islamic Society of North America (ISNA), Workshop 2022:
"If a same-sex couple invites a Muslim imam to offer a duʿāʾ at their wedding, there is no Shar'ī objection, as it supports their Islamic identity."
Contradiction with Shar'ī Texts:

- Qur'an: "Do you approach such immoral practices no one in the worlds has ever done before you?" (Al-Aʿrāf 7:80)
- Hadith: "Allah has cursed the one who imitates the people of Lūṭ." *(Sahih al-Tirmidhī)*

Mechanism of Distortion: Using "cultural proximity" as a pretext to normalize grave sins.

Fifth Case Study: Donating to Institutions Contrary to Sharia

Issued Fatwa: Muslims may donate to churches or organizations that support homosexuality.
Source: Collective Fatwa Center in Canada (2017):
"Donating to churches that offer social services to Muslims (e.g., feeding the poor) is permissible, even if those churches practice disbelief or promote homosexuality."
Contradiction with Shar'ī Texts:

- Qur'an: "Do not cooperate in sin and transgression." (Al-Mā'idah 5:2)
- Hadith: "Whoever imitates a people is one of them." *(Sahih Abū Dāwūd)*

Mechanism of Distortion: Reducing "public interest" to material benefit while disregarding the protection of faith.

Sixth Case Study: Voting in Hijab/Burqa Polls

Issued Fatwa: It is permissible to vote in Western online forums to support Islamic symbols such as hijab.
Source: Islamweb.net (fatwa by a senior scholar):
"Voting in favor of Islamic practices in public forums strengthens the collective interest of the Muslim community."
Flaw: This is a "rational interest" constructed without any Shar'ī text. It is a speculative benefit rather than one rooted in revelation.

Seventh Case Study: "Shari'ah-Compliant" Swimwear (Burkini)

Issued Fatwa: If the swimwear fully covers the awrah and meets modesty standards, it is permissible due to health benefits.

Source: Egyptian Fatwa Authority (Dr. Mahmoud Shalabi), supported by various websites.

Flaw in Methodology: No explicit Shar'ī text permits the burkini. The ruling is extrapolated through assumptions about health and modesty, without definitive evidence.

Eighth Case Study: Permitting Muslim Women to Marry Non-Muslim Men

Shar'ī Ruling: Explicit prohibition in the Qur'an:

- "Do not marry polytheistic men until they believe…" (Al-Baqarah 2:221)
- "If you ascertain that they are believers, do not return them to the disbelievers; they are not lawful for them." (Al-Mumtaḥanah 60:10)
- Scholarly consensus affirms the prohibition.

Contradictory Fatwa: ECFR Decision 4/19 (2003) allowed Muslim women in the West to marry non-Muslim (Christian) men via civil contract, as long as:

- The marriage remains civil, not religious.
- The woman retains the right to practice Islam and raise children as Muslims.

Justifications Based on Maslahah:

- Integration into Western society.
- Difficulty finding suitable Muslim spouses, leading to risks of fornication or apostasy.
- Civil marriage seen as devoid of Shar'ī consequences.

Critique:

- Contradicts definitive texts and consensus.
- Mislabels mere difficulty as necessity.
- Creates an unfounded distinction between civil and religious marriage.
- Inverts the Quranic permission for Muslim men to marry People of the Book.

Issuing Authority: ECFR under Yusuf al-Qaradawi.

Ninth Case Study: Resorting to Secular Courts for Marital Disputes

Shar'ī Ruling: Mandatory arbitration through Islamic law.

- Qur'an: "They do not truly believe until they make you judge in their disputes…" (Al-Nisā' 4:65)
- "They wish to refer to the judgment of ṭāghūt (false authorities)…" (Al-Nisā' 4:60)
- Scholarly consensus prohibits referring disputes to secular law in opposition to Shar'ī rulings.

Minority Jurisprudence Position:

- Some fatwas explicitly or implicitly endorse resorting to secular courts in the West for all marital disputes.
- Little effort is made to establish Islamic arbitration mechanisms.

Justifications:

- Legal dominance of secular systems.
- Protecting vulnerable spouses (typically women).
- Avoiding societal conflict and seeking stability.

Critique:

- Violates the foundational doctrine of exclusive Shar'ī authority.
- Prioritizes material benefit over religious integrity.

- Accepts the status quo instead of striving for Shar'ī alternatives.
- Empties Islamic contracts of meaning when dispute resolution is outsourced to non-Shar'ī law.

Issuing Entities: This trend appears across fatwas and advisory literature from Western-based Islamic councils and imams who prioritize "coexistence" and "realism." While often implicit, it is a prevalent and tolerated practice.

Tenth Case Study: Participation in Western Elections and Voting for Secular Ruling Parties

Issued Fatwa: Sheikh al-Rifa'i on Islamway.net ruled:
"It is permissible to vote and run for office in non-Islamic systems if a significant Shar'ī interest is achieved, such as reducing oppression or supporting justice." *(Sources: Islamway.net, Islamweb.net)*
Justification: Applied the principle of achieving Shar'ī interest through political engagement.

Foundational Response

1. Legislative Authority Belongs to Allah Alone

- Qur'an: "Legislation is only for Allah." (Yusuf 12:40); "Whoever does not judge by what Allah has revealed, they are the disbelievers." (Al-Mā'idah 5:44)
- Meaning: The act of creating law (*ḥukm*)—determining what is halal and haram—is a divine prerogative. In Western democracies, however, constitutional law grants legislative authority to parliaments, where the legitimacy of laws is derived from the people's will via elections. When a citizen votes, they are granting the candidate the constitutional authority to legislate on their behalf. This act is not mere political representation; it is a delegation of the right to legislate—which the Qur'an attributes solely to God.
- This is the very interpretation found in the hadith about the People of the Book: "They took their rabbis and monks as lords besides Allah..." (Al-Tawbah 9:31). When 'Adiyy ibn Ḥātim objected, the Prophet ﷺ explained: "Did they not make what is forbidden permissible, and what is permissible forbidden, and you obeyed them?" He said, "Yes." The Prophet ﷺ replied, "That was your worship of them." *(Tirmidhī, ḥasan)*

Thus, granting legislative authority to humans—even without rituals—is a form of deification. Voting in such systems, even with the intention of reform, implies consent to a system where legislation belongs to man, not God—making it a practical form of shirk (association with Allah) in the domain of sovereignty.

2. Voting Enables Rule by Non-Shar'ī Law

- Qur'an: "Whoever does not judge by what Allah has revealed—they are the disbelievers / wrongdoers / defiantly disobedient." (Al-Mā'idah 5:44–47)
- More strongly: "Do you not see those who claim to believe... yet wish to seek judgment from ṭāghūt (false authorities)...?" (Al-Nisā' 4:60)
- Meaning: Even the desire to refer disputes to ṭāghūt (anything other than divine law) nullifies the claim to faith. How then can one knowingly authorize a lawmaker to legislate contrary to revelation?
- Further: "Do they seek the judgment of ignorance? Who is better in judgment than Allah?" (Al-Mā'idah 5:50)
- "He associates none in His legislation." (Al-Kahf 18:26)
- Voting for a legislator in a secular system implies that humans may share in divine lawmaking—a form of shirk in legislation.

3. Cooperation in Sin and Legislating Evil

- Qur'an: "Do not cooperate in sin and transgression." (Al-Mā'idah 5:2)
- Parliamentary participation entails electing individuals who legalize fornication, usury, and other prohibited acts under civil law—thus becoming a partner in sin.

4. Lawmaking Is a Divine Right

- Qur'an: "Or do they have partners who have legislated for them in religion what Allah has not permitted?" (Al-Shūrā 42:21)

- Voting in such systems or supporting those who do it constitutes participation in this forbidden act.

5. Holding Office in a Non-Islamic Legislative System Is Invalid

- Hadith: "Whoever introduces into this matter of ours something that is not from it—it is rejected." *(Bukhārī, Muslim)*
- Hadith: "No obedience to any created being in disobedience to the Creator."
- Political engagement in a man-made legislative framework is not a legitimate Islamic action.

Sixth Argument: Testimonies from Scholars Prohibiting Participation

- **Sheikh Bakr Abu Zayd** (*Hukm al-Intimā'*): Prohibited participation in democratic systems as it implies consent to ruling by other than Allah's law.
- **Sheikh Ibn Bāz and Ibn 'Uthaymīn:** Both rejected elections in systems of secular legislation.
- **Sheikh Abu Ishāq al-Ḥuwaynī (Egypt):** "Democracy makes the lawful what parliament permits, and the unlawful what it prohibits—this is explicit disbelief."
- **Sheikh 'Abd al-Salām Yāsīn (Morocco):** In *al-Minhāj al-Nabawī*, declared participation in legislative institutions is implicit acceptance of their un-Islamic foundations.
- **Sheikh 'Umar Fallāta (Tunisia):** Fatwas declared that elections in man-made legal systems fall under *ḥukm bi-ghayr mā anzal Allah*.
- **Sheikh Muhammad Ahmad Ḥusayn (Mufti of Jerusalem):** Confirmed that any system where people replace divine revelation with popular sovereignty is *ṭāghūt*, and participation is forbidden.
- **Sheikh 'Abd al-Qādir 'Awdah (Egypt):** In *Islamic Criminal Legislation*, stated lawmaking is solely Allah's right, and human interference is a dangerous breach.
- **Sheikh al-Bashīr al-Ibrāhīmī (Algeria):** "To accept rule not based on the Qur'an and Sunnah is to abandon loyalty to God and accept ṭāghūt."
- **Sheikh Sa'īd Ḥawwā (Syria):** In *Jund Allah Thaqāfah wa Akhlāqan*, denounced democracy as incompatible with Islam's premise that sovereignty belongs to Allah alone.

Seventh Argument: Necessity Cannot Justify Foundational Prohibitions

- Qur'an: "Whoever is forced [by necessity], not intending transgression, incurs no sin." (Al-Baqarah 2:173)
- This applies to physical necessity (food, drink)—not ideological participation in systems of ṭāghūt.
- Imam al-Shāṭibī: "Necessities permit the forbidden only to the extent required." "The exception must not become the rule."

Jurisprudential Conclusion:

Participation in parliamentary elections within systems that assign legislative authority to human beings is a form of engaging in *ḥukm al-ṭāghūt*. It involves affirming and empowering a legal order that claims to replace divine revelation with popular will. This contradicts the essence of faith (*īmān*), and depending on belief and intention, may constitute *shirk akbar* (major idolatry). The believer is commanded to disbelieve in ṭāghūt: "Whoever disbelieves in ṭāghūt and believes in Allah has grasped the firmest handhold…" (Al-Baqarah 2:256).

Eight Argument: Muslims Have No Real Political Influence in the West

- Muslims in Western countries lack meaningful political weight—not only Muslims, but all identity groups. The liberal system is designed to fragment society into minorities (whites, women, LGBTQ+, racial minorities, Muslims, Christians, etc.), none of whom wield real legislative influence. Actual power remains with political

parties and elite capitalist circles that control media and authority. The idea that Muslims can achieve political leverage through the ballot box is an illusion inconsistent with how Western societies are structured.

- Muslim participation is often used to legitimize the system and promote cultural assimilation, not to support Islam.
- Political parties prevent Muslims from voting according to their religious principles and require adherence to party platforms that often contradict Sharī'ah.

Conclusion

Participation in Western elections—whether by running for office or casting a vote—is not consistent with Shar'ī guidelines. It:

- Clearly violates the Qur'an and Sunnah.
- Contradicts the positions of trusted early and contemporary scholars.
- Enables evil and facilitates the alteration of religious principles.
- Is based on speculative rational interests that do not justify what Allah has forbidden.

It is incumbent upon the Muslim to remain steadfast in their faith, to distance themselves from falsehood and its people, and not to be deceived by hollow political slogans. The revealed texts of Islam are comprehensive, sufficient, and provide full guidance—free of the need for such illegitimate forms of political participation.

Response to the Claim that Prophet Yusuf (Joseph) Ruled by Non-Divine Law

Some advocates for participating in non-Islamic political systems cite the verse in which Yusuf عليه السلام says: *"Appoint me over the storehouses of the land; indeed, I am trustworthy and knowledgeable"* (Yusuf 12:55). They interpret this as evidence that Yusuf held a governmental position within a non-Islamic (pagan) system—therefore, justifying participation in secular systems. They also point to the verse: *"He could not have taken his brother under the king's law unless Allah willed it"* (Yusuf 12:76), interpreting it to mean that Yusuf operated under the king's law, not divine law.

They argue further: there is no scriptural restriction on applying this example to others, and since prophetic stories are for emulation, Yusuf's case supports the permissibility of such political involvement. They add: ruling by other than what Allah revealed is a fundamental principle that applies across all revelations—and Yusuf, while affirming *"Judgment belongs only to Allah"* (Yusuf 12:40), still took office!

Detailed Refutation:

1. Yusuf was a Prophet Sent with Divine Law Whose Mission Was to Rule by It

- Qur'an: *"Mankind was one community; then Allah sent the prophets as bringers of good tidings and warners and sent with them the Scripture in truth to judge between the people concerning that in which they differed."* (Al-Baqarah 2:213)
- *"We sent Our messengers with clear proofs and sent down with them the Scripture and the balance that the people may maintain justice."* (Al-Ḥadīd 57:25)
- The phrases *"to judge"* and *"that people may maintain justice"* indicate that one of the principal purposes of prophethood is the implementation of divine justice through revealed law.
- It is inconceivable that Allah would appoint a prophet and then allow him to legislate or enforce man-made law—contrary to divine legislation—without rebuke or correction.
- Yusuf was a divinely guided, infallible prophet. Any interpretation that contradicts this infallibility must be rejected.

- Even if his law differed slightly from Islamic law, it would have been rooted in revelation. The general principle that prophets must govern by divine guidance rules out the possibility that Yusuf governed by non-divine law.

2. Yusuf Affirmed the Principle of Divine Sovereignty

- Qur'an: *"Judgment belongs only to Allah. He has commanded that you worship none but Him. That is the correct religion, but most people do not know."* (Yusuf 12:40)
- It would be illogical for Yusuf to affirm divine sovereignty and simultaneously apply laws made by men. Just as Prophet Shuʿayb said: *"I do not intend to differ from you in that which I have forbidden you. I only desire reform as much as I am able."* (Hūd 11:88)

3. Yusuf Was Granted Authority and Sovereignty

- Qur'an: *"Thus We established Yusuf in the land, to settle therein wherever he willed."* (Yusuf 12:56)
- This confirms full empowerment and freedom in governance. He was not coerced into applying the king's law but had complete authority to apply divine law.

4. Yusuf Applied the Law of Ya'qub (Jacob) in the Legal Case

- Qur'an: *"He could not have taken his brother under the king's law unless Allah willed it."* (Yusuf 12:76)
- The king's law forbade enslaving a thief. Yusuf instead had his brothers propose a ruling derived from the divine law of Yaʿqub: *"Whoever's bag it is found in—he himself will be the penalty."* This is the only legal case explicitly described in the narrative, and Yusuf applied divine law—*not* the king's law.

5. Gradual Transition in Titles: From "Aziz" to "King"

- Initially, Yusuf is referred to as *"Aziz"* (chief minister). Later, after reuniting with his family and ascending authority, he refers to himself as having received *"al-mulk"* (kingship): *"My Lord, You have given me authority (mulk)..."* (Yusuf 12:101).
- This suggests that Yusuf ultimately attained full sovereignty or a level of delegated power equivalent to it.

6. Logical Incoherence in the Argument for Secular Participation

- Is it reasonable that Allah would send a prophet, empower him, then allow him to rule by man-made law without correction?
- On the contrary, Allah praises Yusuf and refers to him as among the chosen: *"Indeed, he was of Our chosen servants."*
- This invalidates the argument that Yusuf governed under a system of disbelief or enforced its laws.

7. Yusuf Did Not Apply the King's Law—He Overrode It

- In the one documented legal case, Yusuf bypassed Egyptian law to apply divine law.
- Qur'anic verses show Yusuf was not a subordinate official but a sovereign authority:
    - *"The king said: 'Bring him to me; I will appoint him exclusively for myself.' Then he said: 'Indeed, today you are established in position and trusted.'"*
    - *"Thus We established Yusuf in the land..."*
    - *"He could settle wherever he willed..."*
    - *"My Lord, You have given me authority..."*

8. False Analogy Between Yusuf and Modern Secular Parliaments

- Yusuf was not a coerced subordinate—he was empowered.
- Yusuf did not operate under a constitutional framework, but under divine revelation.
- Yusuf governed by God's law; parliaments legislate contrary to it.
- Ancient Egypt did not have constitutions or legislative assemblies. Laws were decreed by rulers based on political and moral discretion—not via democratic process or legal systems.
- The term "king" in Yusuf's time contrasts with "Pharaoh" in Moses' story. The former reflects a form of monarchy that did not deify rulers in the same manner.

- Ancient rulership was centralized and executive in nature, not codified by statute or civil codes. Therefore, when the king appointed Yusuf as chief over grain storage, he gave him operational autonomy. Yusuf could override existing customs—as seen in his legal decision.

Conclusion: The story of Prophet Yusuf عليه السلام shows that he was fully empowered to govern, applied divine law, and was not part of a man-made legislative system. The governance in ancient Egypt was administrative, not legislative in the modern sense. Yusuf's actions, praised by Allah, demonstrate adherence to divine instruction, not compromise with polytheistic law. Therefore, invoking his story to justify participation in secular parliaments or governance by non-Shar'ī law is a grave misapplication and a distortion of the story's true meaning.

The entire narrative served to comfort and assure the Prophet Muhammad ﷺ during the year of sorrow—showing that steadfastness in truth and reliance on divine guidance will ultimately lead to empowerment, just as it did for Yusuf. Any attempt to extract justification for secular participation from this story runs counter to its very purpose.

Refuting the Claim That the Prophet ﷺ Approved of Najāshī Ruling by Non-Islamic Law

This section is adapted from the profound work *Ad-Da'wah ilā al-Islām* by Ustadh Ahmad al-Mahmoud:

Anyone who sincerely carries Islam and works earnestly to reestablish it in governance and life—whether as an individual or a collective—cannot, in good conscience, participate in ruling by disbelief (ḥukm al-kufr), while simultaneously claiming to work toward its eradication. To partake in the ruling systems of kufr, which enforce non-Islamic laws, is in fact a reinforcement of those very systems—not their destruction. Any justification offered for such participation is nothing but self-deception before it is a deception of Allah and the believers, especially when that justification directly contradicts unequivocal, definitive legal texts (qaṭ'iyy ath-thubūt, qaṭ'iyy ad-dalālah).

It is a grievous sin for the carrier of the Islamic call to adopt a perceived "maslaḥah" (interest) not acknowledged by Sharī'ah, and use it as a pretext to violate a clear-cut textual command. Worse still is when such a person resorts to mere conjecture masquerading as evidence to justify engaging in systems that rule by laws other than what Allah has revealed.

One of the frequently misused proofs by proponents of such participation is the story of Najāshī—the king of Abyssinia (al-Ḥabashah)—whom the Prophet ﷺ announced had passed away, and for whom he performed the absent funeral prayer (ṣalāt al-ghā'ib). The argument goes: since Najāshī accepted Islam during the Prophet's ﷺ lifetime yet continued to rule by a non-Islamic system, it must be permissible for Muslims to partake in non-Islamic governance. This claim is severely flawed for the following reasons:

1. **Context of the Aḥādīth**: Al-Bukhārī titled five of the six aḥādīth he narrated under "The Death of Najāshī," and the sixth under "Funerals." These reports focus exclusively on the Prophet ﷺ informing the Companions of Najāshī's death, praising his righteousness, asking them to pray for him, and leading his funeral prayer—none of which prove he ruled by Islam or that such rulership is permissible.
2. **Commentary by Ibn Ḥajar**: In *Fatḥ al-Bārī*, Ibn Ḥajar notes that al-Bukhārī did not entitle the chapter as "Islam of Najāshī," implying that the details of his conversion were not established sufficiently to make that the focal point.
3. **Wording of the Ḥadīth**: The Prophet ﷺ says: "Today a righteous man has died—stand and pray for your brother Ashamah." This indicates the Prophet ﷺ only learned of his Islam and death via revelation at the moment of death. The companions were unaware of his Islam, implying it had remained a private matter.
4. **Timing of His Islam**: These narrations do not clarify when Najāshī embraced Islam. All signs suggest it occurred shortly before his death, unknown to the Prophet ﷺ until revealed by Allah, meaning he had little opportunity to learn and apply Islamic law.
5. **Who Was This Najāshī?**: "Najāshī" is a title—not a personal name—used for all Abyssinian rulers. The Najāshī the Prophet ﷺ corresponded with in his letter (sent after 6 AH) may not be the same man the Prophet ﷺ prayed over. Historical and ḥadīth evidence suggest these were distinct individuals.

6. **Supporting Evidence**: In *Ṣaḥīḥ Muslim*, it's reported that the Najāshī the Prophet ﷺ prayed over was not the one he wrote to inviting to Islam. Similarly, Umm Salamah (ra), who lived in Abyssinia, made no mention of Najāshī converting, and described his treatment of Muslims without stating he had accepted Islam.
7. **Weak Historical Reports**: Some texts, such as those compiled by Ḥamīdullah in *al-Wathā'iq as-Siyāsiyyah*, claim that Najāshī wrote to the Prophet ﷺ declaring his Islam. However, these are not found in the authentic ḥadīth collections and contradict stronger evidence.
8. **Not the same Najāshī:** The twelfth section of **Sahih Muslim** with al-Nawawi's commentary states that the Negus (al-Najāshī) to whom the Prophet ﷺ sent a letter inviting him to Islam near the end of the sixth year after Hijrah—following the Prophet's return from the Treaty of al-Ḥudaybiyyah—**is not the same Negus upon whom the Prophet ﷺ later performed the funeral prayer in absentia (ṣalāt al-ghā'ib)**. The wording of the hadith narrated by Muslim is:

   "...from Anas, that the Prophet ﷺ wrote to Khosrow, Caesar, the Negus, and every tyrant inviting them to Allah the Exalted. **And this was not the Negus upon whom the Prophet ﷺ performed the funeral prayer**."

   This hadith clarifies that the Negus for whom the Prophet ﷺ offered funeral prayer is not the one to whom the early Muslims migrated when they fled to Abyssinia, nor is he the same Negus who received the Prophet's letter—sent with ʿAmr ibn Umayyah al-Ḍamrī—in the latter part of the sixth year, inviting him to Islam.

   Rather, the Negus whom the Prophet ﷺ prayed for had assumed kingship after the death of the Negus who received the Prophet's letter. That earlier Negus did not respond to the Prophet's invitation and did not accept Islam—because if he had accepted the invitation, the Prophet ﷺ would have informed the Companions of it and would have performed the funeral prayer for him. Moreover, Jaʿfar ibn Abī Ṭālib and the other emigrants residing in Abyssinia would have known of his conversion, since they returned to the Prophet ﷺ in the seventh year after the conquest of Khaybar, which was after the letter had been sent to the Negus.

   Had that Negus embraced Islam, his conversion would have had significant resonance and brought joy to the Muslims—especially since it would have coincided with the victory at Khaybar. The Prophet ﷺ would have rejoiced in it and conveyed the glad tidings to his companions. But upon Jaʿfar's return, the Prophet ﷺ merely said:

   "I do not know which gives me more joy: the conquest of Khaybar, or the arrival of Jaʿfar." (Sīrat Ibn Hishām)

   Had the Negus embraced Islam, the Prophet ﷺ would likely have added, "Or the Islam of the Negus". Yet the Prophet ﷺ made no mention of the Negus in this context—despite the fact that the moment would have warranted it if the Negus had responded to the invitation and embraced **Islam**.
9. This Negus who embraced Islam had assumed kingship in the seventh year after the Hijrah, for the Prophet ﷺ had dispatched his envoys to kings and rulers—including the Negus—upon his return from the expedition of al-Ḥudaybiyyah, which took place in Dhu al-Qaʿdah, at the end of the sixth year. It follows, then, that the previous Negus died in the seventh year, and that the Negus who embraced Islam—and for whom the Prophet ﷺ offered the funeral prayer in absentia—came to power that same year. His death occurred **before the conquest of Mecca**, in the eighth year of the Hijrah, as stated by al-Bayhaqī in Dalā'il al-Nubuwwah.

   This means **that the interval between his assumption of power, his acceptance of Islam, and his death was quite short.** During that brief period, he embraced Islam in secret, and no one was aware of his conversion—not even the Prophet ﷺ. The Prophet was only informed of his death and his Islam through divine revelation on the day of his death, as indicated by the wording of the six hadiths recorded by al-Bukhārī regarding his passing.

   Because of the short time he lived as a Muslim before dying, he had no opportunity to learn the rulings of Islam. And the Prophet's ﷺ unawareness of his conversion meant he did not send him any instructions regarding what he should observe or implement.

Thus, this case cannot serve as evidence for anyone who permits himself to participate in a system of disbelieving governance that rules by other than what Allah has revealed. Any claim to the contrary is invalid and refuted.

Conclusion

From all the above, it is clear that:

- The Najāshī who accepted Islam and was prayed over by the Prophet ﷺ is not definitively proven to be the same ruler to whom the Muslims first migrated, or to whom the Prophet ﷺ sent his letter.
- The Islam of Najāshī likely occurred privately and late in his life.
- He did not have time, ability, or perhaps even awareness to implement Islamic rule.
- The Prophet ﷺ did not approve of ruling by other than Allah's law—his silence on Najāshī's Islam until after his death is not an endorsement of his governance.

Thus, this cannot serve as valid evidence for participating in modern-day regimes that legislate in opposition to Islamic law. Any such claim is invalidated by authentic textual and historical evidence.

A Comprehensive Study on the Juristic Principle of "The Lesser of Two Evils" or "The Lesser of Two Harms"

Foundational Introduction: The principle of "the lesser of two evils" or "the lesser of two harms" is among the well-known legal maxims frequently cited by jurists. However, it must be precisely understood within the confines of its strict Sharia-based regulations and not misused as a blanket justification for deviations or political participation in systems of disbelief, as some modern Islamic movements have done. This study explores the origin of the principle, the conditions for its application, the supporting evidence, and examples from foundational juristic texts such as those of al-Ghazali and Izz al-Din ibn Abd al-Salam. It also critiques the contemporary misapplication of the principle and refutes its wrongful use.

First: Definition of the Principle and Its Juristic Scope

- **The Principle:** If a morally responsible person (mukallaf) is compelled to commit one of two prohibitions (i.e., cannot avoid both), then he must choose the one that is less harmful.
- **Its Origin in the Qur'an:**
    - "Allah does not burden a soul beyond its capacity" (al-Baqarah: 286)
    - "So fear Allah as much as you are able" (al-Taghabun: 16)
- **Core Condition:** It must be genuinely impossible to abstain from both prohibited actions, and the mukallaf must inevitably fall into one of them.

Second: Juristic Conditions Governing the Principle

1. **Impossibility of Avoiding Both Harms:** It must be impossible for the individual to avoid both forbidden acts.
2. **Determination of the Lesser Harm Must Be Sharia-Based:** The evaluation must be grounded in revealed law (Sharia), not based on mere whims or utilitarian reasoning.
3. **The Individual Must Be Powerless to Avoid Both Except Through a Greater Harm:** He must be unable to avoid both without incurring a more severe consequence.

Documenting the Conditions for Applying the Principle:

First: Jurists' Statements Affirming the Condition

- **Hanafi School:** Ibn Nujaym in *al-Ashbah wa al-Naza'ir* (p. 96): "When two evils conflict, the greater one is avoided by committing the lesser—if there is no alternative but to commit one."
    - Al-Zayla'i in *Tabyin al-Haqa'iq* (6/22) quoting al-Kasani: "The lesser harm is committed in cases of necessity, when both cannot be avoided."
- **Maliki School:** Al-Qarafi in *al-Furuq* (4/204): "If a person is forced into one of two prohibitions and cannot avoid both, he must commit the one with lesser harm."
    - Al-Mawwaq in *al-Taj wa al-Iklil* (8/218): "Committing the lesser of two harms is permissible in necessity, provided both cannot be avoided."
- **Shafi'i School:** Al-Ghazali in *al-Mustasfa* (1/286): "When two evils conflict and one must be committed, then the lesser is committed."
    - Al-Suyuti in *al-Ashbah wa al-Naza'ir* (p. 117): "If two evils occur together and both cannot be avoided, then the lesser is committed."
- **Hanbali School:** Ibn al-Qayyim in *I'lam al-Muwaqqi'in* (3/14): "The Sharia mandates committing the lesser harm when one of two must be chosen and the greater must be avoided."
    - Al-Buhuti in *Kashshaf al-Qina'* (6/298): "If one is compelled to commit one of two evils and cannot avoid both, he commits the lesser."

Second: Scholars' Explanations of the Condition

- **Meaning of 'Necessity':**
  - Ibn Abidin in his *Hashiyah* (5/45): "Necessity means fear of perishing or losing a body part if the prohibition is not violated."
- **Condition of 'No Exit':** Al-Qarafi in *Anwar al-Buruq* (4/200): "Committing the lesser of two harms is not permissible unless avoiding both is impossible. If both can be avoided, neither should be committed."
- **Verification by Ibn Taymiyyah:** In *Majmu' al-Fatawa* (20/58): "When compelled to commit prohibited acts, the concession applies only to what is absolutely necessary. If one can avoid both, he must do so."

Third: Juristic Applications Clarifying the Condition

Case	Reason	Applicable?
Theft under armed threat	Cannot avoid death or theft	Yes
Participation in a disbelieving government	Can abstain without harm	No
Eating dead meat in the desert	Only options are death or eating carrion	Yes

Conclusion:

The foundational condition—as affirmed by the majority of jurists—is:
"That the legally responsible person (mukallaf) is inevitably compelled to commit one of the prohibited actions, with no ability to avoid both."
This rests on key legal maxims:

1. **Necessities permit the prohibited (to the extent of the necessity).**
2. **Harm is not removed by equal or greater harm.**
3. **Greater harm is removed by lesser harm (only under necessity).**

Third: Valid Examples from Juristic Texts

1. **Difficult Childbirth:** If the life of the mother or fetus is at risk and one must be sacrificed to save the other, the lesser harm—such as saving the mother—is chosen, as noted by scholars.
2. **Murder under Coercion:** Izz al-Din ibn Abd al-Salam stated: "If a person is coerced into killing another Muslim, he must rather suffer death himself, for killing oneself is a lesser harm than unjustly killing another."
3. **Preventing Evil That Causes Missing an Obligation:** If preventing murder or adultery is only possible by missing an obligatory prayer, then preventing the evil takes precedence, as it holds greater Sharia weight.

Fourth: Refuting the Political Misuse of the Principle

Invoking the Principle to Justify Participation in Disbelieving Governance:

- Some preachers today justify parliamentary elections, supporting secular governments or parties, or endorsing legislation contrary to Sharia by claiming to "prevent a greater harm."
- **Refutation:** This is invalid for two reasons:
  1. **Condition of Compulsion is Not Met:** A Muslim can abstain from voting or participating in disbelieving governance, and abstention is legally possible.
  2. **It is Forbidden to Delegate Legislative Authority to Anyone Who Rules by Other Than God's Revelation:** Parliamentary representation involves authorizing the legislator to enact laws—if this is granted religious legitimacy, it constitutes shirk (associating others with God in His legislative right).

3. The Problem of Legislative Delegation (Authorization)

- **Juristic Argument:**
  - Voting is an explicit authorization for the representative to legislate on behalf of the voter. This makes the voter a partner in every law passed by parliament, as stated in the verse: *"Or do they have partners who have legislated for them in religion that which Allah has not permitted?"* (al-Shura: 21).
- **Political Analysis:**
  - Parliamentary systems operate on the principle of a *general mandate*, which gives the elected member authority to vote on all matters during their term (4–5 years), not only those included in their campaign promises.
  - **Real-World Example:**
    - In 2003, 80% of Labour Party MPs in the UK—including Muslim MPs—voted in favor of the Iraq invasion, despite mass Muslim opposition.
    - In 2019, the British Parliament voted to legalize same-sex marriage, with support from parties that included Islamic movements.

4. The Illusion of Preventing Greater Harm

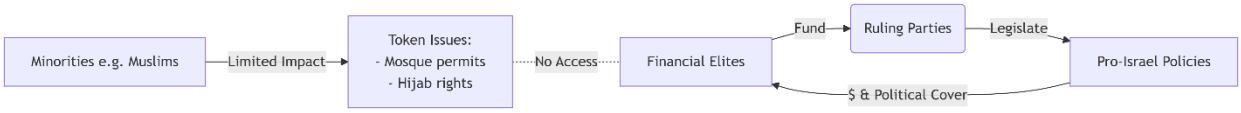
Debunking the "Preventing Homosexuality in Education" Argument:

- Even if a Muslim MP succeeded in removing a clause on homosexuality from a curriculum, this does **not** prevent:
  - The same education system from promoting Darwinism and secularism as absolute truths. In our book *The Origin of the Universe: A Rational, Scientific, and Empirical Proof of the Creator's Existence*, we addressed the issue of *"Exclusionary Secular Dictatorship and Intelligent Design"* by examining the case of Georgia, USA. There, church-supported communities fought to place stickers on biology textbooks stating that "evolution is a theory, not a fact," but a federal judge ruled in 2005 that such stickers were unconstitutional and ordered their removal.
  - In another 2005 case, the Dover School Board attempted to present "Intelligent Design" as an alternative to Darwinian evolution, offering a 60-second statement and library references. The court ruled this a violation of the First Amendment and banned it. These two cases demonstrate that educational agendas follow a strict secular doctrine that uses the separation of religion and state to silence any epistemic alternative—even if it is scientific—on the grounds of suspected religious association.
  - The eventual legalization of homosexuality in law (as seen in 35 Western countries since 2000).
  - The proliferation of moral decadence through media (e.g., Netflix, TikTok), which wields greater influence than schools.
- **UNESCO 2021 Report:** "70% of Western social media content is inconsistent with conservative religious values."
- **Historical Irony:**
  - In France in 2013, political parties involving Muslims supported the same-sex marriage law under the pretext of "focusing on more important issues like Islamophobia"—yet both laws were enacted together!

The Deception of Minority Political Influence

- **Structural Analysis of Liberal Systems (Based on Robert Dahl's Theory of Elite Pluralism):**
  - The Western political system is governed by a "Triangle of Domination":

The Triangle of Hegemony in Western Politics



Arabic Term	English Translation	Expansion & Key Actors
أصحاب رأس المال	**Financial Elites**	• Hedge fund managers (e.g., BlackRock, Vanguard) • Tech oligarchs (e.g., Bezos, Musk, Zuckerberg) • Corporate lobbyists (e.g., PhRMA for Big Pharma, NRA for arms industry)
الأحزاب الحاكمة	**Ruling Political Parties**	• Establishment wings of major parties (e.g., GOP's McConnell faction, Democrats' Clintonite bloc) • Party whips enforcing donor-aligned voting • Bipartisan consensus on core policies (e.g., military spending, Israel support)
لوبيات الضغط الصهيوني	**Pro-Israel Lobbying Complex**	• AIPAC (American Israel Public Affairs Committee) • Democratic Majority for Israel (DMFI) • Republican Jewish Coalition (RJC) • CAMERA (media watchdog silencing Palestine criticism)

Mechanisms of Control

1. **Financial Pipeline**
   - Example: 91% of U.S. Senate elections (2020) were won by candidates with higher corporate funding (OpenSecrets data).
   - *"When Wall Street speaks, politicians kneel."* — Senator Bernie Sanders (2019)
2. **Party Discipline**
   - U.K. Conservative MPs voting against Israeli sanctions (2023) faced deselection threats from party whips.
3. **Lobby Enforcement**
   - AIPAC spent $34M in 2022 to defeat progressive critics of Israel (The Intercept).

Academic Validation

Concept	Theorist/Study	Key Finding
Plutocratic Entrenchment	Princeton Study (Gilens & Page, 2014)	"Economic elites dominate policy outcomes; average citizen's influence is near zero."
Iron Law of Oligarchy	Robert Michels (1911)	"All parties evolve into oligarchies controlled by elites."

Concept	Theorist/Study	Key Finding
Zionist Hegemony	Stephen Walt & John Mearsheimer (2007)	"U.S. Middle East policy driven by Israel lobby, not national interest."

Why Minorities Remain Marginalized

Reality Check:

- Muslim advocacy groups (e.g., CAIR) spend ~$3M/year on lobbying vs. AIPAC's $100M+ (FEC 2022).
- **Result**: 97% of U.S. Congress supports Israel unconditionally despite 72% Muslim voter opposition (Pew 2023).

Case Study: U.S. Congress Voting Patterns

Issue	Corporate/Pro-Israel Position	Progressive/Muslim Position	Outcome
Military aid to Israel	$3.8B/year unconditional	Ceasefire + conditions	98% approval
Student loan relief	Blocked	$10k+ debt cancellation	Blocked 5 times
Palestinian statehood	Opposed	Supported	0% success since 1948

Conclusion

This triangle operates as a **closed feedback loop**:

1. Elites fund campaigns → 2. Parties pass elite-friendly laws → 3. Lobbies protect the system. **Minorities are structurally excluded** from core power nodes – making "participation" in this system **a legitimization of hegemony**, not a path to change. As Noam Chomsky notes:

"The smart way to keep people passive is to strictly limit the spectrum of acceptable opinion, but allow lively debate within that spectrum."

Special Terminology

- **Plutocratic Entrenchment** = *الهيمنة البولغاركية* (i.e., rule of the wealthy)
- **Deselection threats** = *تهديدات بالإقصاء من المقعد الانتخابي*
- **Lobby Enforcement** = *فرض الضغط السياسي* (i.e., the operational mechanism of lobbying)

Harvard University Study (2020):

"The influence of the Zionist lobby on the U.S. Congress surpasses that of all other ethnic minorities combined by a factor of 12."

A Stark Example

- In **2021**, **98% of the U.S. Congress** voted in favor of increasing military aid to Israel—despite **72% of Muslim voters opposing** their parties' stances.

The Fallacy of Partial Gains vs. Strategic Losses

Case Study: The Palestinian Issue

Western political parties—even those deemed "moderate"—maintain fixed and unwavering positions on core issues:

- Military support for Israel.
- Framing Palestinian resistance as "terrorism."
- Pursuit of normalization with the Zionist entity.

Brookings Institute Study:

"86% of all U.S. congressional resolutions concerning Palestine since 1948 favored Israel—regardless of which party was in power."

The Mosque Licensing Deception

- In **Britain**, 40 mosques were shut down between **2001 and 2020** under the pretext of "countering extremism"—despite the presence of Muslim MPs in Parliament.
- **Civil rights are not attained** through legislative authorization, but rather through:
    - **The judiciary** (e.g., the hijab ban in France was contested in the European Court of Human Rights).
    - **Media pressure campaigns**.
    - **Popular grassroots mobilization**—none of which require parliamentary empowerment or representation.

Second: Fulfilling Detailed Demands

A. Weighing the Two Harms:

Governing by Disbelief vs. **Partial Gains**

Dimension	**Harm Resulting from Participation**	**Benefit of Non-Participation**
Religious Legitimacy	Delegating authority to legislate disbelief (a collective sin)	Avoiding legitimization of the secular system
Political Impact	Strengthening the secular regime	Depriving the system of its "pluralistic" cover
Existential Issues	Endorsing decisions on war and normalization	Freedom from responsibility for the regime's crimes
Gains	Token achievements in secondary matters (e.g., licenses, temporary curriculum tweaks)	Upholding principled stance with mass popular respect

Conclusion:

Temporary or superficial gains cannot offset **strategic losses**, especially on matters of existential weight (such as military aid to Israel), for which not only the Muslim MP is held accountable, but also **the voter who empowered them**.

B. The Deception of Electoral Platforms

Practical Reality:

Political parties routinely make critical decisions **without returning to their voters**, particularly in:

- **Foreign policy** (e.g., relations with Israel).
- **Moral legislation** (e.g., abortion, LGBTQ issues).

Examples:

- Canadian PM **Justin Trudeau** legalized **marijuana** in office, though it was **never mentioned** in his 2015 campaign platform.
- Spanish PM **Pedro Sánchez** legalized **euthanasia** in 2021 despite **70% of his voters opposing** the move.

C. The Myth of "Change from Within"

1. Max Weber's "Iron Cage" Theory:

Modern bureaucratic systems **compel entrants** to adopt the system's core values—even if they initially entered in opposition.

2. Cambridge University Study (2022):

"82% of Islamic political parties that participated in governance (e.g., in Turkey, Tunisia, Morocco, Kuwait) **abandoned over 60%** of their Islamic platform **under pressure from international institutions**."

3. The "Minimum Threshold of Acceptability" Rule:

To be recognized as a legitimate political actor within the system, a party must adopt liberal dogmas such as:

- **Absolute equality** (as opposed to gender or moral distinctions rooted in religion).
- **Unrestricted freedom of expression** (even when blasphemous).
- **Secularism** (separation of religion from state governance).

Strategic Approach for Confrontation for Muslims Living in the West

1. Global Strategic Objective: Re-Establishment of the Islamic Khilāfah

- **Support the intellectual and political work** for reviving the Islamic Caliphate in the Muslim world.
- This is the **ultimate solution** to all systemic problems facing Muslims—whether political, social, or economic—as it would restore the implementation of Islam comprehensively in governance, law, economy, and society.
- The **collapse of secularism's effects**—injustice, identity crises, social breakdown—will naturally follow the re-implementation of divine law.

2. Cultivating Deep Islamic Understanding in the West

- **Educate Muslims** on core Islamic beliefs, law, and political theory, especially the *invalidity of secularism*, the *concept of divine sovereignty (ḥākimiyyah)*, and the *obligation of implementing Islam comprehensively*.
- Reconnect Muslims with the classical tradition through **structured halaqat**, courses, and books covering:
    - Usul al-fiqh (Islamic legal theory)
    - Islamic worldview (tasawwur islami)
    - Islamic systems of governance, economy, and social life
    - Refutations of liberalism, nationalism, and modernist distortions

3. Preservation and Assertion of Islamic Identity

- Resist forced assimilation by **strengthening Islamic identity markers**:
    - Arabic language
    - Islamic dress
    - Distinct Islamic moral codes (ḥayā', gender interaction, family structure)
- Teach Muslim youth to **critically challenge secular-liberal norms**, including:
    - Individualism
    - Gender ideology
    - Moral relativism
- Promote pride in **Muslim civilization and history**—not as nostalgia, but as an intellectual and practical alternative to Western models.

4. Constructive Social Engagement Without Compromise

- **Engage positively in society**: contribute to public welfare (health, education, economy) in a manner that showcases Islamic ethics.
- **Avoid political entanglement** in secular legislative systems that legitimize kufr laws.
- Uphold Islamic ethics in interactions, volunteerism, and professional life without **diluting religious principles**.
- Advocate for Muslims' civil rights through **lawful and public means**—media, legal advocacy, petitions—without aligning with secular ideologies.

5. Intellectual Counter-Narrative and Da'wah

- Build a **coherent Islamic counter-narrative** that refutes:
  - Secular democracy
  - Feminism, LGBTQ+ normalization
  - Religious pluralism as theological relativism
- Train Muslim youth and activists to be **confident intellectual carriers of Islam**, capable of articulating:
  - Islam as a system (not just spirituality)
  - Islamic governance as a viable solution
  - The moral and spiritual bankruptcy of Western liberalism

6. Rejection of Integration Through Compromise

- Categorically reject participation in systems that:
  - Legislate contrary to Shariah
  - Demand moral compromise (e.g., interest-based economics)
  - Normalize secular definitions of "moderate Islam"
- Publicly **expose the contradiction** between Islamic beliefs and Western liberalism, including its use of "tolerance" as a tool to suppress religious truth.

7. Support for the Oppressed Muslim Ummah

- Build **moral, financial, and informational support** networks for oppressed Muslims globally:
  - Palestine, Uyghurs, Kashmir, Rohingya, etc.
- Raise awareness of **colonial legacies**, ongoing political subjugation, and how **Khilāfah is the only strategic solution**.
- Counter the narrative of "Islamic extremism" used to criminalize Islamic political identity.

A Decisive Jurisprudential Maxim: *"Harm cannot be removed by an equivalent or greater harm."* — *Ibn al-Qayyim, Iʿlām al-Muwaqqiʿīn*

Political Recommendation

Emphasis must be placed on the **"power of rejection" (i.e., boycott)**—an effective strategy that compels regimes to concede, as seen in campaigns to boycott products that support Israel. This approach proves far more successful than participation, which is invariably marred by concessions.

This analysis thus shows that **participation in secular systems of governance is not "the lesser of two evils."** Rather, it is a recurring evil—one that legitimizes disbelief and implicates the Muslim in the sin of legislating against divine law. And God knows best.

Contemporary Deviant Applications

1. Participation of Islamic Movements in Democratic Governance

Claim: Participation prevents the dominance of secularists.

- **Response:** Such participation constitutes **a legislative mandate**; mere entry into the system affirms and entrenches it—it is not a necessity.
- **Deconstructing the "Penetration" Argument:**
    - The democratic system is built on **"institutional equilibrium,"** meaning that participation within it signals recognition of its legitimacy, not resistance to it.
    - According to David Easton's theory of **Institutional Legitimacy**, "the participant in a system becomes a guardian of it, not a challenger."
- **Contemporary Example: Tunisia (2011–2021)**
    - Participation of *Ḥarakat al-Nahḍah* (The Ennahda Movement) in parliament did **not prevent the passage** of laws violating the Sharīʿah—such as equal inheritance and legalizing adoption by homosexuals.
- **Outcome:** The movement transformed from a "reformist movement" into a "supporter of the status quo," according to the International Institute for Strategic Studies (IISS, 2022).
- **New Jurisprudential Argument:**
    - Participation entails **swearing allegiance to a secular constitution**, which signifies a **shift in loyalty from divine law to man-made law**.

"And do not obey one whose heart We have made heedless of Our remembrance and who follows his own desires." (Sūrat al-Kahf, 18:28)

Permitting the Election of the "Lesser Evil" Secular Candidate

- **Response:** What is forbidden **cannot be represented**, nor granted legitimacy through voting.
- **Analysis of the Modern Social Contract:**
    - In a democratic system, voting is not merely the "selection of an individual," but **a delegation of authority to form the 'General Will'**, as per Rousseau.
    - This renders the voter **a co-author** of every law passed by parliament during its term.
    - Hence, the voter is also **responsible for the MP's crimes**, such as voting in support of Israel or pro-LGBTQ legislation, marijuana ...etc.
- **Unprecedented Empirical Evidence:**
    - **Yale University Study (2023)** across 100 countries found:

"Parliamentarians elected under claims of 'moderation' vote in favor of morally corrupt laws in 89% of cases, under pressure from their party blocs."

- **Jurisprudential Paradox:**
    - If two candidates exist—a disbeliever and a wicked transgressor—**abstaining from participation is the true "lesser evil,"** because:
        - Refusing to vote **undermines the legitimacy of the system**, as in Algeria's 2019 elections where turnout dropped to 40%.
        - Participation incurs **two sins**: aiding in transgression **and** legitimizing the rule of laws other than what Allah has revealed.

Appointing Sharīʿah Judges Within Secular Systems

- **Response:** A judge in this context is **bound by secular law**, and thereby enforces disbelief. Muslims must not be deceived by claims of "harm reduction."
- **Exposing the Structural Illusion:**

- The judge in secular systems is a prisoner of **procedural codes**, not religious edicts.
- He is **obliged to prioritize the state constitution** over Sharīʿah law.
  - Example: Article 2 of the Egyptian Constitution states: *"The principles of Sharīʿah are a main source of legislation"*—i.e., not binding.
- The judge is **prohibited from enforcing ḥudūd (Islamic penal codes)** such as apostasy or adultery, under the guise of "individual freedoms."

- **Court Structure Evidence:**
  - In **Malaysia's dual court system**:
    - Sharīʿah courts are restricted to **personal status issues** (marriage, divorce, inheritance).
    - They are barred from adjudicating **existential matters** (economics, politics, criminal law).
- **The New Moral Predicament:**
  - If the judge rules based on secular law:
    - In **homosexuality cases**: he recognizes its legitimacy.
    - In **usury cases**: he validates and enforces bank-based transactions.

This reveals that the claim of "reducing harm" is a mirage—it actually **multiplies the sin.**

Key Jurisprudential Alerts

- **The ability to abstain nullifies the necessity clause**:
  If a third, lawful path exists, it becomes obligatory; the excuse of "necessity" cannot be invoked lightly.
- **Invoking ease without detailed evidence** is simply **chasing dispensations without discipline**—a path scholars considered ruinous.
- **Maslahah (public interest) does not abrogate textual proofs**:
- It must be governed by what the Sharīʿah affirms. If it contradicts definitive evidence, it is dismissed.

A Comprehensive Conclusion

The principle of **"choosing the lesser of two evils"** is **not a blanket license** to bypass divine rulings, nor is it a legitimate justification to normalize what is categorically prohibited. It is a **precise and narrowly applicable principle**, bound by strict conditions, and only to be used in **genuine cases of necessity**—and only after exhausting all other legitimate Sharʿī alternatives.

To use it outside its context is to engage in **human legislation masquerading as Sharīʿah**, opening the door to base desires and blurring the line between ḥalāl and ḥarām.

Imām al-ʿIzz ibn ʿAbd al-Salām said: *"A harm is not removed by a greater harm unless it is absolutely unavoidable and its prevention takes precedence."*

Thus, the **greater harm** lies not in committing a wrong, but in **clothing that wrong in legitimacy**. Participation does not eliminate the evil—it rather **transforms it from an external imposition to an internalized, systemically legitimized choice**, and that is the greater calamity.

And God knows best. May peace and blessings be upon our Prophet Muhammad, and upon his family and companions.

Conclusion and Recommendations

Certain applications of "Fiqh al-Aqalliyyāt" (Minority Jurisprudence) have led to **dangerous methodological concessions** in established rulings, particularly regarding **marital law and engagement with secular systems**—under the pressures of modern reality and in the name of "public interest."

In practice, **maslahah** has been distorted from a **Sharʿī principle grounded in sound legal methodology** into a **rationalist utilitarianism**, tied to **Western norms and pressures**, resulting in:

- Contradicting **definitive textual proofs** and **scholarly consensus**.
- Undermining **foundational creedal tenets**, such as **ruling by divine law** and **loyalty and disavowal (al-walāʾ wa-l-barāʾ)**.
- Weakening moral sensitivity toward categorical prohibitions.
- Presenting a distorted image of Islam's "flexibility"—misconstrued as **limitless interpretability**.

The real challenge for **Fiqh al-Aqalliyyāt** is not in compromising legal foundations, but in **crafting innovative, Sharʿī-compliant solutions** within the framework of:

- **Definitive textual principles**
- **Disciplined legal reasoning (uṣūl al-fiqh)**

This demands:

1. **Unwavering commitment** to Sharʿī constants—no matter the pressure.
2. **Strict regulation** of the use of necessity, need, and maslahah—within the bounds of Islamic jurisprudence.
3. **Genuine efforts to develop viable Sharʿī alternatives**, such as:
    - Real Islamic financing solutions, not affiliated with the capitalist system.
    - Recognized Islamic arbitration tribunals.
    - Effective Islamic marriage initiatives.
4. A clear **distinction between lawful facilitation** of Islam's practice in the West and **compromising divine law** for comfort.
5. A **courageous internal critique** of the methodological deviations within minority jurisprudence institutions.

Fiqh al-Aqalliyyāt will **only fulfill its religious and societal purpose** if it remains anchored in **the certainties of revelation**, offering a coherent jurisprudential vision that merges **Sharʿī authenticity with practical realism**—not one where **rationalist utilitarianism erases immutable rulings.**

Fiqh of Balancing (al-Muwāzanāt), Prioritization, and Realities: Between Usūlī Discipline and Rationalist Deviation

Executive Summary:

This chapter investigates the evolution of the concept of "fiqh of balancing and priorities" (fiqh al-muwāzanāt wa-l-awlawiyyāt), demonstrating that although the idea has legitimate roots in classical usūl al-fiqh, its contemporary application often strays from those foundations. The author argues that the modern deployment of this framework, particularly by some reformist movements, has departed from methodological and legal constraints and is now used to justify broad concessions in matters of creed and Sharīʿa, under pretexts like “choosing the lesser of two evils” or “warding off harm.”

The chapter deconstructs the epistemological foundations of this trend and presents contemporary examples where utilitarian reasoning is prioritized over Sharʿī texts. These include: participation in secular systems, legalization of prohibited acts under claims of necessity, and advancing imagined interests over categorical scriptural evidence. The result is the erosion of Sharʿī authority and the replacement of legal principles with political or pragmatic justifications.

The author concludes that a disciplined fiqh of prioritization is indeed part of Islamic jurisprudence, but it must never override decisive textual rulings or violate the higher objectives (maqāṣid) of Sharīʿa. Its misuse, as practiced in some circles today, represents a methodological deviation that paves the way for the intellect to transgress the bounds of revelation, dismantling the foundations of the religion in the name of "flexibility."

Key Themes: • Defining Balancing and Its Usūlī Constraints: The author clarifies that balancing between interests and harms is not foreign to Islamic jurisprudence. However, it is bound by strict conditions: o It must not contradict definitive texts. o The interest in question must be certain, not imagined. o It must not open the door to undermining the Sharīʿa.

• Deviant Contemporary Applications: The chapter presents several cases where balancing is invoked to override texts: o Justifying work within man-made legal systems under the banner of “warding off greater evil,” o Participating in liberal democratic elections to “prevent secularists,” o Issuing fatwas permitting suspension of Sharʿī rulings in media or politics with the excuse that “the current reality does not allow it,” o Forming alliances with hostile powers under the justification of “preventing imminent harm.”

• Critique of the Principle of "The Lesser of Two Evils": The chapter examines the abuse of this legal maxim, which has become a carte blanche for legitimizing prohibitions. In traditional fiqh, it is only applied under strict and exceptional conditions.

• The Concept of "Fiqh al-Wāqiʿ" (Jurisprudence of Reality): From Tool to Tyrant: The author warns that this once-neutral tool for contextualizing legal rulings has morphed into a supra-textual authority. Instead of aiding the application of Sharīʿa, it is now used to suspend it in favor of “understanding the times” or “jurisprudence of what is possible.” Reality thus becomes a higher standard than revelation.

• Confusing Sharʿī Politics with Intellectual Deviation: The chapter uncovers how some preachers misuse terms from Islamic political thought to legitimize dangerous ideological and creedal compromises. It affirms that Sharʿī politics does not mean the demolition of Sharīʿa in pursuit of short-term utilitarian gains.

Conclusion: A disciplined fiqh of balancing is a necessary part of Islamic law. However, the undisciplined version, which is used to override revealed texts in the name of "interest" or "harm prevention," poses a grave threat to the principles of religion. It leads to methodological collapse, Sharīʿa dilution, and conformity to political whims.

Chapter Content: Alongside minority jurisprudence, some preachers have popularized terms such as "fiqh of balancing" or "fiqh of priorities" to refer to the act of weighing benefits and harms in newly emerging situations. This refers to the process of assessing realities to determine the greater of two goods or the lesser of two evils.

In principle, this idea is not objectionable if it adheres to the methodology of weighing and prioritizing in classical jurisprudence, and if it is bound by the conditions previously outlined in this book regarding unrestricted interest (*al-maṣlaḥah al-mursalah*). These conditions ensure that both the identification and weighing of interests are governed by revelation—either through explicit evidence that determines what constitutes an interest, or through careful legal application of overarching legal principles and Sharīʿa objectives.

We even find instances of balancing in the Qurʾān, such as the story of Mūsā (Moses), peace be upon him, and al-Khiḍr. Al-Khiḍr chose to damage a boat to save it from confiscation by a tyrant king, balancing temporary harm with a greater be

nefit. However, some cases in that story are not to be generalized. For example, al-Khiḍr killed a boy to spare his parents future torment through his rebellion and disbelief. This action was based on divine revelation, and we cannot extrapolate such decisions today without similar guidance. We cannot, for instance, claim a boy today should be harmed because he *might* corrupt his parents. Thus, while the principle of weighing interests and harms as shown in the Qurʾān is sound, any attempt to define such interests through unaided human reason—without clear revelation—becomes a means of demolishing firmly established legal rulings supported by mountain-solid proofs.

A Methodological Framework for Weighing Conflicting Evidences in Usul al-Fiqh: A Scholarly Alternative to the Jurisprudence of Balancing Interests

When the jurist trained in the science of Usul al-Fiqh is confronted with seemingly contradictory evidences, he does not resolve the matter based on presumed "interest" or subjective preference. Rather, he adheres to a rigorous, principled methodology founded on the discipline of Usul al-Fiqh, employing calibrated rules of equivalence and preference (al-ta'ādul wa al-tarjīḥ) that reflect a profound understanding and a disciplined juristic mindset anchored in textual analysis and legal indication (dalālah).
The process of determining preference (tarjīḥ) unfolds through three central intellectual stages:

First: The Stage of Equivalence — Investigating Apparent Contradictions

- **Verify the Existence of Actual Contradiction:** Not every apparent contradiction between two evidences is genuine. A deeper analysis of their indications may reveal harmonization (jam'), specification (takhṣīṣ), or restriction (taqyīd).
- **Prioritize Reconciliation (Jam') Over Preference (Tarjīḥ):** So long as reconciliation is possible, it is preferable, since acting upon both evidences is better than dismissing one.
- **Mechanisms of Reconciliation:** If one text is general ('āmm) and the other specific (khāṣṣ), or one is absolute (muṭlaq) and the other qualified (muqayyad), then restriction is prioritized over absoluteness, and specification over generality. Interpretation (ta'wīl) is preferred to abrogation (naskh), provided the cause or subject matter is unified. Importantly, these are not tools of preference but mechanisms of reconciliation.
- **If Reconciliation Is Infeasible:** Only then does the jurist proceed to the stage of weighing and preferring one evidence over another.

Second: The Stage of Preference Between Conflicting Evidences

This stage is governed by precise and disciplined criteria, which fall into three main categories:

1. Strength of Transmission (Marājiḥ al-Sanad):

- Prefer mass-transmitted (mutawātir) reports over solitary (āḥād) ones.
- Prefer sound (ṣaḥīḥ) narrations over weak (ḍa'īf) ones.
- Prefer reports agreed upon by the Ummah over those under dispute.
- Prefer narrations transmitted by upright, reliable imams over lesser narrators, and those supported by multiple chains over single-chain reports, and so on.

2. Strength of Indication (Marājiḥ al-Matn):

- Prefer explicit (naṣṣ) texts over ambiguous or probabilistic ones.
- Prefer apparent (ẓāhir) meanings over interpreted (mu'awwal) ones—unless the interpretation is based on valid evidence or reinforcing context (qarīnah).
- Prefer decisive (muḥkam) over ambiguous (mutashābih) texts, provided reconciliation is not possible or there is no clear indicator favoring one.
- Prefer literal alignment (muṭābaqah) over necessary implication (iltizām) and inclusion (taḍammun), and explicit over implicit indications.

In all these cases, context, speaker's intent, and the generality or specificity of the ruling determine the strength of the indication.

3. Strength of Relevance to the Case (Marājiḥ al-Ṣilah):

- Prefer the specific over the general when the two conflict.
- Prefer the clarifying (mubayyin) over the ambiguous (mujmal), since the ambiguous text cannot be applied until clarified.

- Prefer the qualified (muqayyad) over the absolute (muṭlaq), provided a meaningful link exists—i.e., unity in cause and ruling.
- Prefer the evidence directly related to the specific incident over a general text that does not intend that particular case.

These criteria are not based on subjective tastes or unbounded interests, but on decisive principles of textual understanding and application.

Third: The Stage of Applying the Preferred Evidence

- The preferred (rājiḥ) evidence must be implemented after thoroughly assessing all the above considerations.
- As for the outweighed (marjūḥ) evidence, it should, where possible, be interpreted in a manner that does not contradict the preferred one. If reconciliation is not possible, it is set aside.

Thus, the process of preference in Usul al-Fiqh is a **scientific and structured balancing** between legally valid evidences, evaluated according to their **degrees of authenticity, indicative strength, and relevance to the case**, not based on imagined interests or utilitarian speculations.

This stands in stark contrast to what is known as "the contemporary Jurisprudence of Balancing Interests (Fiqh al-Muwāzanāt)," which frequently prioritizes what is presumed to be in the public interest without reference to the established principles of preference. The outcome is a reversal of rulings: rendering the definitive subservient to the speculative, and subordinating the Sharʿī to the political—a profoundly dangerous methodological deviation.

The Disciplined Usūlī Alternative: Anchoring Preferences in Textual Strength, Not Interest

This methodological alternative is grounded in a coherent epistemological system that regards **the strength of evidence as the decisive factor**, not the relative utility of interests. Sound application (ḥusn al-tanzīl) becomes the fruit of precise understanding and disciplined legal methodology—not a function of compromise or conformity to socio-political realities.

In this way, the fatwa regains its epistemic standing as an extension of Prophethood—not as an instrument for legitimizing political strategies.

Ijtihād Is Valid Only When Based on the Stronger Evidence, Not the Nearer Interest

The Usūlī method of weighing evidences is foundational for the **reassertion of the text's authority**, the **disciplining of the legal mind by revelation**, and the **elimination of personal whim**. It represents a robust and legitimate alternative to the "interest-based jurisprudence" which rests on **subjective evaluations divorced from Usūlī rigor**.

Other Usūlī Angles for Structuring Legitimate Balancing (Muwāzanah)

First: Criteria for Weighing Between Rukhṣah (Concession) and ʿAzīmah (Strict Obligation)

A *rukhṣah* is not merely a facilitation or convenience; it is a legally established exception based on a valid excuse. It is permissible to act upon a *rukhṣah* only under specific conditions, such as:

1. **The presence of a valid Sharʿī excuse**, such as coercion, illness, or travel.
2. **That the original ruling (ʿazīmah) is not entirely abrogated**—meaning the fundamental legal duty remains, and the concession only lifts undue hardship, not the obligation itself.
3. **That the rukhṣah is not used as a pretext** to undermine Sharʿī objectives or disable the implementation of divine rulings.

Second: The Principle of Necessity (Ḍarūrah) and Its Conditions

Necessity is not an open door; it is a tightly regulated exception governed by well-established legal limits:

- **Necessity is evaluated strictly in proportion to the harm being averted.**
- It **does not permit what is intrinsically forbidden (muḥarram li-dhātih)** except to the extent required to repel harm.
- It **must not be used as a pretext** for violating categorical rulings or nullifying the Sharīʿah.
- **General legal rulings must not be built upon exceptional rulings made under necessity.**

"Necessity does not nullify a legal principle, nor does it establish a new ruling. It merely allows for an exceptional ruling within its specific context."

Third: Choosing Between Two Prohibited Options — The Principle of the Lesser of Two Evils

This is also referred to as the principle of "repelling the greater harm by committing the lesser," and is subject to strict conditions:

- **Both harms must be actual and verified**, not merely speculative or imagined.
- **The choice must be limited to these two harms only**, with no third permissible alternative.
- **The chosen option must be the one causing lesser damage** and **least contravening of Sharʿī rulings.**

The goal in such cases is:
"To commit the lesser of two harms when there is genuine conflict, while strictly adhering to what is legally permitted and avoiding any unbounded leniency."

Fourth: Weighing Between Maslaḥah (Benefit) and Mafsadah (Harm)

A presumed benefit (maslaḥah) is not considered legally valid unless it meets the following Usūlī criteria:

- **It must be recognized by the Sharīʿah**—either explicitly or by type/category—not contradicting a clear Sharʿī principle.
- **It must be real and verified**, not merely imagined or speculative.
- **It must be assessed using Sharʿī scales**, not purely rational or utilitarian judgments.

A harm (mafsadah) may not be averted by creating a greater harm, nor by violating a categorical legal principle.

A Case Study of Invalid Application: Permitting Usurious Loans to Buy a House

- **Usury (ribā) is categorically forbidden** by decisive textual evidence.
- **Purchasing a home is not a necessity**, but rather a presumed benefit—especially since lenders typically offer such loans only to those who can already afford rent that exceeds the mortgage payment.
- It is impermissible to **commit a clear-cut legal violation (ribā)** in pursuit of a **potential or speculative benefit**, especially when alternatives exist.

"If a supposed benefit contradicts a categorical text, it is a **false benefit**, and carries no legal weight in the Sharīʿah."

- **Every secondary legal ruling must be linked to its detailed textual proof**, not to abstract rational interests.
- Both benefit and harm must be **measured through sound textual indications and established legal causes**, not solely through broad, general objectives.
- There can be **no legal preference (tarjīḥ)** between rulings unless there exists an **actual and irreconcilable contradiction**.

This framework constitutes a **serious scholarly attempt** to construct principled Usūlī rules that may serve as the proper foundation for legitimate jurisprudential weighing (muwāzanah) in actual, qualified cases of conflict.

The Theoretical Foundation of Fiqh al-Muwāzanāt According to Its Proponents

In constructing a theoretical foundation for *Fiqh al-Muwāzanāt*—understood here as *rational balancing*—some of its modern advocates cited the example of Prophet Hārūn (Aaron), peace be upon him, allegedly *approving of calf worship*.
They claim that, in their estimation, Prophet Hārūn was content to let the people worship the golden calf so that he would not divide the community of believers!
They cite the verses from Sūrat Ṭā Hā:
{[Moses] said, "O Aaron, what prevented you, when you saw them going astray, (92) from following me? Did you disobey my command?" (93) [Aaron] said, "O son of my mother, do not seize me by my beard or by my head! I was truly afraid that you would say, 'You have caused division among the Children of Israel, and did not observe my word.'"}
(Sūrat Ṭā Hā, 20:92–94)
Based on this passage—**isolated** from the rest of the verses that describe the incident—they extracted an extremely dangerous conclusion: that a noble Prophet was willing to tolerate idol worship, prioritizing communal unity over the uncompromising rejection of false gods!

But what they failed to see in these noble verses is critical. The verses contain Aaron's explanation to Moses: *{You have caused division among the Children of Israel and did not observe my word.}* and Moses's rebuke: *{Why did you not follow me? Did you disobey my command?},* This exchange was preceded by Moses's command to Aaron, in the very same surah: *{"Take my place among my people, do right (reform), and do not follow the way of the corrupters."}* (Sūrat al-Aʿrāf, 7:142).

Furthermore, Sūrat al-Aʿrāf makes it even clearer that Hārūn never approved of their worship. On the contrary, they **overpowered him and nearly killed him**, as he says: *{O son of my mother! The people overpowered me and were about to kill me. So do not let the enemies rejoice over me, and do not count me among the wrongdoing people.}* (Sūrat al-Aʿrāf, 7:150). Would they have nearly killed him had he not fiercely opposed their abominable act of worship? Clearly not.

This reveals a **grave methodological flaw** in their foundational reasoning: they **extracted** a fragment of the incident mentioned in one surah and **severed** it from the rest of the Qur'anic account. This mutilation of the text resulted in a grossly mistaken understanding that cannot stand under holistic scrutiny.

A Sharp Rebuttal by Ustadh Maḥmūd ʿAbd al-Karīm Ḥasan

He writes: "Did Allah send the messengers and reveal the scriptures for any purpose other than to be worshipped alone? Were not the messengers and the books sent to serve as a **criterion (furqān)** between truth and falsehood, between faith and disbelief? What sin, what crime—indeed, what disbelief—could be greater than associating partners with Allah, or prostrating and praying to anything other than Him? Can one who is *pleased* with calf worship even be called a believer? What kind of *unity* is this, for which Prophets would be willing to sacrifice the doctrine of Tawḥīd (Divine Oneness)?!

Allah Himself recounts the words of Moses: *{He said, "My Lord! I only have control over myself and my brother, so set us apart from the defiantly rebellious people."}* and Aaron's own plea: *{Do not count me among the wrongdoing people.}*. Can anyone with even a minimal grounding in Islamic jurisprudence or basic understanding of Islamic creed be ignorant of this foundational truth: that the mission of all Prophets necessarily required the **division of humanity into two distinct camps**, believers and disbelievers? Do we not find this principle echoed in tens, even hundreds, of verses in the Qur'an? Allah Most High says: *{And had Allah willed, He could have made them one nation, but He admits into His mercy whomever He wills. As for the wrongdoers—they will have no protector or helper.}* (Sūrat ash-Shūrā, 42:8). He also says: *{You have an excellent example in Abraham and those with him, when they said to their people: "We disown you and what you worship besides Allah. We reject you, and between us and you enmity and hatred has appeared forever, until you believe in Allah alone."}* (Sūrat al-Mumtaḥanah, 60:4).

Thus, they are **two separate nations**: the believers, whom Allah admits into His mercy, and the disbelievers, wrongdoers who are excluded from that nation.

So how is it that the advocates of "Fiqh al-Muwāzanāt" are willing to **prioritize unity over faith**, even if such unity is established **on the basis of disbelief**?

Yet Allah, Most High, says: *{If it were not that mankind would become one community [of disbelievers], We would have made for those who disbelieve in the Most Merciful silver roofs for their houses and [silver] stairways upon which to mount… and [silver] doors for their houses and couches on which to recline.}* (Sūrat az-Zukhruf, 43:33–34), Did not the Qur'an itself draw a line even between father and son on the basis of creed?

{[Allah] said, "O Noah, indeed he is not of your family. Indeed, he is [one whose] work was other than righteous, so do not ask Me about that of which you have no knowledge. I advise you, lest you be among the ignorant."} (Sūrat Hūd, 11:46). If the methodology of this so-called jurisprudence (fiqh) allows for *this kind* of balancing—where core theological beliefs are compromised or altered for the sake of **subjective utility** or **desire-based interests**, in contradiction to **dozens of verses**, even contradicting the **foundational pillars of faith itself**—then what, in this worldview, would be considered sacred or untouchable?

What principle would the advocate of this view still consider *off-limits for negotiation or reinterpretation*?"

End of excerpt.

Examples of Methodological Errors in "Fiqh al-Muwāzanāt" (With Documented Cases)

Case Study: The Fatwa Permitting Recourse to Secular Courts in Family and Inheritance Matters

- **Fatwa:** The European Council for Fatwa and Research (ECFR) issued a ruling in 2001 permitting recourse to secular (non-Islamic) courts in matters of family law and inheritance for Muslims living in the West.
- **Official Document:** "Seminar on the Rulings for Muslim Minorities," held in Paris, 2001 — Resolution No. (3/12).
- **Justification Cited:** A supposed balancing of two harms:
  - The *harm of resorting to ṭāghūt (non-divine) courts*
  - versus the *harm of Muslims losing their rights in Western courts*

Usūlī Critique of This Fatwa:

1. **Violation of a Categorical Text:**

{Have you not seen those who claim to believe in what was revealed to you and what was revealed before you, yet they desire to seek judgment from the ṭāghūt, though they were commanded to reject it?} (Sūrat al-Nisāʾ, 4:60)
This verse categorically forbids seeking judgment from non-divine legal systems, framing it as a betrayal of true belief.

2. **Violation of the Universality Condition (Ḍābiṭ al-Kulliyyah):**

The claimed interest—preserving individual rights—is limited and personal. The actual harm—normalizing judgment by other than Allah's law—is *universal*, affecting the very foundation of the religion.

3. **Violation of the Principle of Necessity:**

Necessity only permits recourse to non-Sharʿī courts *under coercion*—such as if one is a prisoner forced into it. **Voluntary** choice does not meet the threshold of necessity in the Sharʿī sense.

4. **Outcome in Practice:**

Western courts do **not** adjudicate based on Islamic legal criteria. Instead, their rulings often contradict multiple Sharʿī rulings, such as:

- Awarding the woman half of the man's wealth upon divorce (*divorce settlements*), contrary to the Sharīʿah.
- Granting **custody of children** to the non-Muslim parent, in contradiction to Sharʿī conditions.
- **Inheritance distribution** violating Islamic law:
  - Full gender equality (e.g., equal shares for male and female heirs),
  - Inheritance rights for non-Muslim spouses.
- Some Western states **recognize same-sex marriage**, granting homosexual partners **inheritance and adoption rights**.

Creedal Dilution (Tamīʿ ʿAqāʾidī) Among Muslims:

- The average Muslim begins to view **secular courts as legitimate authorities**, with no distinction in their mind between a Sharʿī court and a secular one.
- This leads to a **gradual shift in worldview**: the civil constitution begins to be perceived as a superior and final authority, above the Sharīʿah.

Institutionalizing the Authority of Ṭāghūt Courts:

- Repeated fatwas like this **normalize** recourse to secular legal systems—not merely *legally*, but **socially and religiously**.
- It becomes customary for people to "take all disputes to the state courts," while Islamic Sharʿī bodies are **marginalized and delegitimized**.

Refuting the Claim of Preserving Rights:

- **True preservation of rights** is only achieved through their **divinely ordained framework**—namely, the Sharīʿah of Allah—not man-made laws.

- For a woman to receive half of her husband's wealth, or to gain **unconditional custody** of the children, is not a preservation of rights—but a **violation and usurpation** of them.
- **Dividing inheritance** contrary to Allah's law **invalidates contracts and violates divine instruction**, such as: *{Allah instructs you concerning your children...}* (Sūrat al-Nisāʾ, 4:11)

Conclusion:

This application of *Fiqh al-Muwāzanāt* did not achieve any genuine Sharʿī benefit. It merely **eliminated one supposed harm** (based on subjective rational analysis), but introduced **greater and more destructive harms**, and **did so through a path entirely unrelated to the Sharʿī framework.**

The Ironic Reality:

In France, there has already been a **case where a court refused to recognize an Islamic divorce**, declaring that it **violates the principles of the French Republic**!
And more importantly: **a valid Sharʿī alternative already exists in practice**. It includes:

- **Private Islamic arbitration courts**,
- **Licensed mosque imams**,
- **Sharʿī legal councils** within Muslim communities.

So the legitimate question is: **Why issue such a fatwa in the first place?**
Was the purpose to **encourage Muslims** to take their personal status disputes to secular courts?

Second Example: Suspending the Prescribed Punishment for the Married Adulterer under the Pretext of "Averting the Ḥudūd"

- **Fatwa:** The 2006 ruling of the *Fiqh Council of North America (FCNA)*, which held that the *ḥadd* (prescribed punishment) of stoning for a married adulterer should not be applied in the West.
- **Document:** *FCNA Journal*, Issue 17 (2006), p. 23.
  Text: "Implementing the punishment of stoning in Western societies would portray a distorted image of Islam and hinder the daʿwah (call to Islam) to non-Muslims... We have resolved to broadly adopt the principle of 'suspending ḥudūd due to doubt,' whereby the Western environment itself constitutes sufficient doubt to nullify the punishment!"
- **Justification Cited:**
  A supposed *balancing* between:
  - The *harm of suspending a ḥadd*,
  - and the *harm of damaging Islam's image in the West due to the harshness of the punishment*.

Some proponents went even further, suggesting that certain ḥudūd (fixed punishments) which the West considers contradictory to its principles should be temporarily avoided to protect Islam's reputation and prevent alienation.
Eventually, others made the case even more directly:
"The objectives of the Sharīʿah, justice and mercy, can be fulfilled without recourse to physical punishments. We can substitute them with lighter *taʿzīr* (discretionary) penalties suited to our modern times!"
But such statements in truth amount to the **abolition of ḥudūd**, and portend great harm to the Sharīʿah.

Historical Background to the Fatwa: Why Was Stoning Revoked?

The **immediate political and social context** included:

1. **The pressure of the "War on Terror"** after 9/11, including Western media attacks on Islamic law and its portrayal as "barbaric," especially following the implementation of some ḥudūd in countries like Nigeria (2002).
2. **The influence of Islamic "elites" aligned with the discourse of human rights**, where notions such as "human dignity" and "cruelty" became higher moral references than divine law. (See: *Islam and Human Rights Conference*, Geneva, 2004)
3. **The rise of revisionist approaches** to ḥudūd, such as the writings of *Muhammad Shahrūr*, who claimed that ḥudūd are historical constructs, not divine obligations.

All these movements represent **intellectual submission to Western liberalism**, an effort to prove that "Islam is liberal", by compromising foundational tenets that the West deems incompatible with "human rights."
Notably, the fatwa was not issued in response to any real judicial implementation of stoning in the West (as no such implementation exists). Rather, it aimed to:

- **Strip the ḥudūd of their sanctity**, and
- **Pave the way for discussion of their full repeal in Muslim-majority countries**, as later happened in the *"Reform of Islamic Jurisprudence"* conference held in Qatar in 2010.

Moreover, **some of these councils were funded by Western governments**. For instance, the *Dutch Ministry of Foreign Affairs* in 2004 stipulated funding on the condition that the *religious discourse be modernized in line with liberal values*.
This point must be emphasized: Many such councils receive **direct financial support from Western governmental entities**, as previously documented.

The Historical Precedent: Turning "Practical Impossibility" into "Legal Legitimacy"

When Shaykh ʿAbd Allāh bin Bayyah (a member of the European Council for Fatwa and Research) commented on this decision in 2007, he stated:
"We are not abolishing the ḥadd, but suspending its implementation in the West because punishments are not to be applied in contexts of social discord (*fitnah*)."

The Problem: Redefining Practical Infeasibility as Religious Justification

What actually exists is the **practical absence** of an Islamic political authority to implement the ḥadd, not an intrinsic "fitnah." The only valid Sharʿī excuse for suspending ḥudūd is **genuine incapacity**—not the absence of an Islamic state. The Sharīʿah only excuses lack of application due to *inability*, not due to **political context** or **non-Muslim societal norms**.
It does **not** grant license to suspend legal rulings based on the absence of the Islamic state—it merely considers such absence as an obstacle to implementation, **not a reason to nullify the ruling itself**.
Therefore, the more appropriate juristic stance would have been to say:
"The ḥudūd are the exclusive jurisdiction of an Islamic state, which alone is authorized to implement them within the broader framework of the Sharīʿah, a comprehensive system that governs all aspects of life."
Establishing the ḥudūd cannot be separated from the **broader implementation of Islam**.
They are the natural fruit of a just order that:

- Provides social and economic justice,
- Secures people's needs,
- And reforms society at its roots.

To apply ḥudūd in isolation, without:

- An Islamic economic system that ensures mutual support and fairness, and
- A social order that safeguards the family and prevents collapse of morals, would be not only ineffective, but *oppressive*. It would mean punishing crimes without removing the system that causes them. The current liberal capitalist order:
- Fuels desires,
- Promotes immorality,
- And impoverishes nations,
- Making crime a **natural consequence** of its dysfunction.

The Misuse of the Term "Fitnah"

The claim that ḥudūd should not be applied if they cause *fitnah* has been **misappropriated**.

- *Fitnah* here does **not** refer to media backlash or societal discomfort.
- It refers to a **structural misalignment between the means and the end**, when ḥudūd are applied in a setting devoid of the comprehensive Islamic framework.

In such cases, yes, the ruling is not implemented. But that is due to the **absence of legitimate authority**, not because the ruling itself is suspended or nullified. Hence, **individuals are not authorized** to apply the ḥudūd; doing so would constitute a violation of Islamic governance principles. But to **use this situation as a pretext to cancel the ḥudūd entirely** is a **dangerous distortion**—a case of weaponizing exceptions to abolish core rulings.

Usūlī Discussion:

1. **Turning "Doubt" into "Necessity":**
   The claim that "distorting Islam's image" is a valid *shubha* (doubt) to avert a ḥadd is baseless. Doubts valid in this context include coercion, evidentiary uncertainty—not public relations concerns.
2. **Contradicting Established Consensus:**
   There is *consensus among the Companions* on implementing the punishment of stoning for the married adulterer, as reported in *Ṣaḥīḥ al-Bukhārī* (Hadith 6830).
3. **Violating the Principle of Certainty:**
   The *harm to be avoided* (reputation damage) is speculative, while the *harm incurred* (abandoning a divine command) is certain.

Scholarly refutations have made it clear: The ḥudūd are among the **greatest manifestations of divine justice**, and essential for:

- Deterrence,
- Preservation of life, wealth, and honor,
- And fulfillment of Sharʿī objectives.

Yes, it is reported that ʿUmar ibn al-Khaṭṭāb suspended the punishment of theft during the famine of *ʿĀm al-Ramādah*, due to overwhelming general necessity. This is acceptable, as necessity and ambiguity are legitimate grounds for suspension. But to suspend a ḥadd due to political calculations, media fear, or appeasement of disbelievers is **abominable and invalid**.

Islam was not revealed to please human sensibilities, but to guide them—whether they like it or not. So where is the "interest" they claim to be preserving?

In reality, it is a **grave harm**—for **suspending the ḥudūd leads to contempt for divine law and emboldens criminals**. As we observe in states that have replaced ḥudūd with man-made laws:

- Murders, theft, drug abuse, and sexual assault have surged.
- The so-called "public interest" they aimed to protect has become the **first victim** of these policies.

Abandoning the Sharʿī deterrent has led only to more injustice and widespread moral decay. This clearly contradicts the ultimate intent of the Lawgiver.

Methodological Mechanisms of Deviation in the Jurisprudence of Balancing (Fiqh al-Muwāzanāt)

First Mechanism: Unrestrained Expansion of the Concept of "Necessity"

- **Correct Methodology:**
  Necessity (*ḍarūrah*) is constrained by strict limits: "Necessity is to be assessed proportionally—it only permits the forbidden when needed to repel certain destruction." — *al-Qarāfī*, *al-Furūq* (4/40), Conditions include:
  - The necessity must be **certain**, not imagined.
  - It must be **temporary**, not permanent.
  - It must be resolved through the **least possible violation** of the law.
- **Deviation in Fiqh al-Muwāzanāt:**
  Redefining **"social needs"** (such as coexistence or integration) as necessities. Elevating **worldly conveniences** that fall far short of qualifying as genuine necessities to a level where they are used to justify prohibited acts.

Example 1:
ECFR Fatwa (2011) permitting employment in interest-based banks (*ribāwi*) on the grounds of "necessity to secure a livelihood."

- **Critique:**
  Working in direct involvement with ribā contracts is only considered a necessity when there is **genuine risk of starvation**—which is exceedingly rare in Western countries. Ensuring **comfort or financial stability** is not a necessity in the Sharʿī sense.

Example 2:
Fatwa permitting **prayer without covering the ʿawrah** (nakedness) in Western contexts.

- **Issuing Body:** ECFR (2007),
- **Document:** Resolution No. (15/3), "Seminar on Facilitating Worship for Muslims in the West"
- **Justification Given:**
- "Necessity of social integration and avoiding provocation of Western society."
- **Critique:**
  Covering the ʿawrah is a **categorical requirement** for the validity of prayer, based on authentic text: *Ṣaḥīḥ Muslim*, 510. "Social embarrassment" does **not** constitute necessity. Muslims can pray **in private spaces**—homes or Islamic centers—without compromising this essential condition.

Second Mechanism: Instrumentalizing the Maqāṣid (Objectives of Sharīʿah) to Undermine Scriptural Texts

- **Correct Methodology:**
  The *maqāṣid* must be **derived from the texts**, not used to override them. , *al-Shāṭibī*, *al-Muwāfaqāt* (2/286)
- **Deviation in Fiqh al-Muwāzanāt:**
  Elevating **general objectives** (e.g., preserving the image of Islam or unity of the Ummah) over **specific scriptural commands**, even when the latter are clear and authoritative.

Example 1:
Yūsuf al-Qaraḍāwī, in *Fiqh al-Jihād* (2009), argued that **martyrdom operations** are prohibited, citing the goal of "preserving the image of Islam" in the West. This position disregards the detailed evidentiary basis in the classical texts regarding jihad and its legitimacy.

Example 2:
Reducing the concept of *jihad* based on a claimed objective of "promoting civilizational progress."

- **Source:** Yūsuf al-Qaraḍāwī, *Fiqh al-Jihād*, Vol. 2, p. 1200
- **Justification:**
  "Achieving global peace takes priority over military jihad."
- **Critique:**
  Jihad is an obligation based on explicit texts (*Ṣaḥīḥ al-Bukhārī*, 2787). Its objectives are clearly

defined: *defense* and *spreading Islam*. It cannot be nullified by modern rationalist interpretations of peace or progress.

Example 3:

Call to repeal the ḥadd punishment for apostasy in the name of "freedom of belief."

- **Proponent:** Ṭāriq Ramaḍān, in *Islam and Modernity* (2015, p. 112)
- **Justification:**
  "To achieve the objective of religious freedom in Western societies."
- **Critique:**
  - The ḥadd for apostasy (*ḥadd al-riddah*) is **established by consensus** (*ijmāʿ*), Ibn Qudāmah, *al-Mughnī* (12/266)
  - "Freedom" in Islam is **not absolute**, it is **bounded by faith**., Ibn Taymiyyah, *al-Ṣārim al-Maslūl* (3/967)

Islam **does not adopt** the Western notion of religious freedom as an unqualified good.

Freedom in Islam: Servitude That Upholds Human Dignity

Freedom in Islam does **not** mean liberation from all moral or legal constraints. Rather, it means **liberation from servitude to other human beings and desires**, and **exclusive servitude to Allah**. This is the essence of human dignity and perfection. ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) said: "Since when have you enslaved people, when their mothers gave birth to them free?", Reported by Ibn ʿAbd al-Ḥakam in *Futūḥ Miṣr*. He said this in protest against the unjust enslavement of Coptic Christians, associating **freedom with human dignity**, not with casting off divine commands.

Servitude to Allah is the highest form of freedom.

Human beings are not free from servitude per se—they are either servants of Allah or servants of their desires.
Allah says: *{Have you seen the one who takes his own desire as his god?}* (Sūrat al-Jāthiyah, 45:23)
Thus, **true freedom** is to surrender oneself to a Wise and All-Knowing Creator—not to oneself, nor to other humans.
When a human being submits to laws legislated by another human—who has no divine authorization to legislate—he has, in effect, become a **servant of man**.

Legislative authority belongs solely to divine revelation.

Submitting to Allah's commands is what **guarantees one's dignity**, **protects true interests**, and **fulfills the purpose of existence**. In this, a person becomes truly free. "My servant is free as long as he is content. But he becomes a servant of men when he becomes greedy." Narrated by Ibn al-Mubārak in *al-Zuhd*, mursal.
Greed for what lies in others' hands is a form of humiliation, even if one imagines himself to be free.

Therefore, **freedom in Islam** means emancipation from man-made legislation and human domination, and **submission to Allah alone**. When a person achieves this, he is **genuinely free**, by virtue of implementing his Lord's commands, which raise him above the status of servitude to creation. It is thus essential to establish **clear distinctions** between:

- **Freedom** (as the opposite of servitude to creation),
- and **Western libertarianism**, which advocates liberation from all religious or moral restraints.

This distinction is critical to prevent the Islamic conception of freedom from being absorbed into, or distorted by Western liberal frameworks.

Second: "Freedom" in Western Thought, Liberation from All Restraint and Value

In Western liberal thought, *freedom* means liberation from every form of constraint—legal, moral, or social. The liberal worldview defines freedom as an individual's ability to do whatever he wishes, whenever he wishes, so long as it does not infringe upon another's freedom. This results in **extreme individualism**, the **desacralization of values**, and the **enslavement of man to his impulses and desires**.

A careful analysis of Western philosophical traditions reveals that *freedom is separated from responsibility*. In much of Western philosophy, freedom is often detached from moral accountability or any form of ethical or religious duty. In Islam, however, legislation is **inextricably linked to accountability** and responsibility:

"And stop them; indeed, they are to be questioned." (Sūrat al-Ṣāffāt, 37:24). Thus, the human being who attains freedom by liberating himself from man-made laws and by submitting to the legislation of his Lord is, in the Islamic paradigm, a being bound to *responsibility*. For example, what is called *freedom of expression* in Islam is not "absolute" but rather a **responsible duty**, bound by the rulings of Sharīʿah: *"It is enough of a lie for a man to report everything he hears." Ṣaḥīḥ Muslim*

The matter, therefore, is far more serious than framing it simply as "freedom." In Islam, speech is constrained by:

- Truthfulness,
- Wisdom,
- Prevention of discord (*fitnah*),
- Preservation of people's honor.

The right to express an opinion is inseparable from:

- Accountability,
- Advice (*naṣīḥah*),
- Commanding good and forbidding evil.

All of this is regulated by the concepts and limits of the Sharīʿah. It must be:

- Free of slander,
- Free of promotion of immorality,
- Free of value destruction,
- And respectful of sanctities.

Even the ruler is held accountable to prevent his transgression against rights or against the people, all within a **regulated legal framework**.

Thus, the Islamic system is **much broader** than the mere allowance of unrestricted speech. It is part of a **comprehensive framework** that assigns **responsibilities to society and individuals** in order to protect the collective values, concepts, standards, and convictions embraced by the Ummah. This framework exists to prevent deviation and moral decay.

Man is bound by **Sharʿī obligations** in order to perfect his servitude to his Lord. It is precisely this commitment to divine obligation that preserves human dignity and bestows upon him his true meaning and purpose.

In contrast, **liberal "freedom"** is the denial of all restraints—even moral ones. This renders the individual **a slave to his own whims**, his passions, or the interests of others—leading him to **lose himself** under the illusion of being free.

On "Freedom of Belief"

To preserve the ethical and moral dimensions of freedom, and to prevent its divorce from man's existential purpose and intellectual responsibility to reflect upon and explain the universe and life, Islam approaches the notion of belief in a nuanced way.

The Islamic perspective grants every rational and morally accountable person the **right to choose his beliefs freely**—without coercion. This preserves the person's dignity and conscious choice. Islam guarantees the **freedom to adopt what one believes to be the truth**. The overwhelming evidence pointing to the truth of Islamic belief fills the universe, brimming with precise signs and indications.

Man is endowed with a **remarkable faculty for reasoning and inference**, and it is only natural that he be empowered to undertake this grave and profound responsibility.

Yet this freedom **must not be turned into a pretext** for diluting the fixed tenets of faith—tenets that are **rooted in definitive rational and revelatory proofs**—nor for dissolving the distinction between truth and falsehood.

Such misuse undermines:

- The integrity of genuine inquiry,
- The seriousness of pursuing truth,
- And the intellectual rigor required to reach sound belief.

In fact, it **destroys the very structure** of the reasoning process that:

- Begins with the evidence that permeates creation,
- Continues through rational reflection upon it,
- And culminates in the recognition of the truth of Islam.

To **derail or sabotage this process** is to **sever freedom from its existential purpose**—a deeply perilous act.

Islamic Law Guarantees Freedom of Belief Before Acceptance of Islam

Islamic law guarantees the **freedom of belief** to the non-Muslim even before he embraces Islam. But once **proof has been conveyed**, the individual is **obligated to uphold the truth** that has become manifest. Freedom of belief cannot be exploited as a means to:

- Dismantle truth,
- Or retreat from it.

When the truth becomes evident through sound evidence, one must commit to it. It is not permissible to deny it. One must remain consistent with the **structure of reason → evidence → reflection → definitive conclusion** about the truth of Islam.

From this foundation, the Sharīʿah grants non-Muslims living in the abode of Islam (*Dār al-Islām*) the right to remain upon their beliefs, **without any recognition of the validity of those beliefs**, and prohibits coercion in religious conversion.

These rights, however:

- Are not detached from obligation,
- Are not separated from divine values,
- But are **governed by the standards of truth, justice, and wisdom**,
- And are subject to the overarching **maqāṣid** (objectives) of the Sharīʿah in achieving human and societal well-being.

Man is **not the judge** of what constitutes interest (*maṣlaḥah*) or harm (*mafsadah*). The **reference point is divine revelation**, and the human being's dignity lies in being bound to guidance.

Therefore, Ṭāriq Ramaḍān's invocation of what he called "the objective of religious freedom in Western societies" is **a Western objective, not an Islamic one**. Its juxtaposition in Sharʿī legal balancing (*muwāzanah*) is **invalid from the outset**.

Third Mechanism: Falsifying the Process of Balancing by Inflating Interests and Minimizing Harms

- **Correct Methodology:**
  Sharʿī harms are determined by revelation—such as *ribā* (usury) and *zinā* (fornication)—not by rational opinion or cost-benefit analysis. They **cannot be weighed** against material gains. *al-Qurṭubī*, *al-Jāmiʿ li-Aḥkām al-Qurʾān* (4/160)
- **Deviation in Fiqh al-Muwāzanāt:**
  Reducing Sharʿī harms to **mere worldly damage**, measuring them **only by their material consequences**.

Example 1: Permitting Muslim women to marry non-Muslim men

- **Justification given at:** London Seminar (2005)
- **Claimed benefit:** "Serving the interests of daʿwah (inviting to Islam)."
- **Critique:**
  The **loss of her religion** and that of her children is a **far greater harm**, one that cannot be outweighed by speculative missionary benefit.

Example 2: Justifying engagement with interest-based finance companies

- **Issuing Body:** *International Islamic Fiqh Academy* (2016, Resolution 245)
- **Justification:** "Balancing the harm of ribā with the benefit of advancing Muslim economic development."
- **Critique:**
  Proponents of the maqāṣid recognize **preservation of wealth** as one of the five essential objectives of the Sharīʿah. But the **entire Sharʿī economic framework** rests on the inviolable prohibition of ribā, due to its devastating effects on society. Their argument **undermines itself**—it asserts a Sharʿī objective while **violating its foundational condition**. The contradiction invalidates the entire claim.

- **Additional Refutation:**
  Ribā is forbidden **in and of itself** (Sūrat al-Nisāʾ, 4:161), not merely due to its material harm. Moreover, viable alternatives exist: *Islamic ṣukūk*, *crowdfunding*, etc. Its social harm is well-documented and undeniable.

Example 3: Permitting Commercial Insurance

- **Issuing Body:** *Council of Senior Scholars in Saudi Arabia* (minority opinion, 1978)
- **Justification:** "Balancing the risk (gharar) of insurance with the benefit of social security."
- **Critique:**
  - The alleged benefit **does not justify** a clear prohibition. *Ibn ʿUthaymīn*, *al-Sharḥ al-Mumtiʿ* (8/243)
  - Commercial insurance is based on **prohibited uncertainty (gharar),** *Ṣaḥīḥ Muslim*, 1513

Fourth Mechanism: Selective Use of "Historical Context"

- **Correct Methodology:**
  Sharīʿah rulings are **fixed and stable**, while historical context is understood **in light of the text**, not the other way around.
- **Deviation in Fiqh al-Muwāzanāt:**
  The claim that scriptural texts were revealed for **specific historical circumstances only**, and thus no longer apply in today's world.

Examples of This Deviation:

Example 1:

Claiming that the prohibition of a Muslim woman marrying a non-Muslim man was **limited to the environment of the Arabian Peninsula**.

- **Proponent:** *Khālid Abū al-Faḍl*, *Islam and the Challenge of Democracy* (Arabic ed., "al-Fiqh wa-l-Aqalliyyāt," 2003, p. 77)
- **Justification:**
  "The verse was revealed regarding the Arab pagans and does not apply to the modern Western context."
- **Critique:**
  The ʿ**illah** (legal rationale) for the prohibition is **disbelief**, not tribal identity or regional custom:

{And do not marry polytheistic men [to your women] until they believe…} (Sūrat al-Baqarah, 2:221). The rationale remains valid **across all times and places**. There is **consensus (ijmāʿ)** on the general applicability of the prohibition. Ibn Ḥazm, *al-Muḥallā* (7/97)

Example 2:

Restricting the obligation of hijāb to **periods of societal temptation or "fitnah."**

- **Proponent:** *Muhammad Shaḥrūr*, *al-Kitāb wa al-Qurʾān* (1990, p. 500)
- **Justification:**
  "The verse on hijāb was revealed solely to protect the wives of the Prophet ﷺ."
- **Critique:**
  The relevant verse is **explicit and general**:

{And tell the believing women…} (Sūrat al-Nūr, 24:31), There is **consensus on the obligation of hijāb** for all believing women. Al-Nawawī, *al-Majmūʿ* (3/169)

Fifth Mechanism: Replacing Sharʿī Terminology with Western Constructs

- **Correct Methodology:**
  Sharʿī terms like *ḥaraj* (undue hardship) or *ḍarūrah* (necessity) have **precise technical meanings** in the Usūl tradition.
- **Deviation in Fiqh al-Muwāzanāt:**
  Western terms like "integration" and "human rights" are **translated uncritically into fatwas**, distorting Sharʿī concepts.

Examples of This Substitution:

Example 1:

Transforming "personal freedom" into a justification for **unveiling**.

- **Proponent:** *Amina Wadud*, *Qurʾān and Woman* (1999, p. 63)
- **Justification:**
  "The veil restricts the personal freedom of women in the West."
- **Critique:**
  Servitude to God takes precedence over **Western definitions of freedom**:

{Indeed, We sent Our messengers with clear proofs… so that mankind may establish justice.} (Sūrat al-Ḥadīd, 57:25)
There is consensus that exposing the ʿawrah (nakedness) is forbidden. Ibn ʿAbd al-Barr, *al-Tamhīd* (23/331)

Example 2:

Replacing *Sharʿī justice* with Western-style **egalitarianism in inheritance**.

- **Issuing Body:** *National Fatwa Council of Australia* (2018)
- **Justification:**
  "To align inheritance laws with the Western principle of equality."
- **Critique:**
  The division of inheritance is a matter of **revealed law**, not human reasoning:

{Allah instructs you concerning your children…} (Sūrat al-Nisāʾ, 4:11). Absolute equality undermines the **divinely ordained wisdom** in differential inheritance shares. Al-Ṭāhir ibn ʿĀshūr, *al-Taḥrīr wa al-Tanwīr* (4/250)

These mechanisms illustrate how *Fiqh al-Muwāzanāt* has, in many instances, degenerated from a legitimate tool of juristic reasoning into a **methodology for dismantling religious constants**, by hijacking core Sharʿī terms like *maṣlaḥah* (interest) and *ḍarūrah* (necessity), and **emptying them of their Usūlī content**.

The Solution:

The remedy lies in **restoring the Usūlī foundations** of juristic reasoning and **distinguishing clearly** between:

- *Ijtihād* in secondary matters (*furūʿ*),
- And **unchangeable foundational principles** (*uṣūl*).

Only by anchoring fatwas in this disciplined framework can the Sharīʿah maintain its integrity and fulfill its mission in preserving the truth and guiding human behavior.

Fiqh al-Wāqiʿ (Jurisprudence of Reality)

True Function of Fiqh al-Wāqiʿ

The correct role of *Fiqh al-Wāqiʿ* is to provide a **conscious understanding of reality** in order to apply Sharʿī rulings to it. However, in contemporary usage by some, it has **degenerated into a pretext** for diluting legal rulings under the guise of "accommodating the complexities of the modern age."

How often do we hear the claim:

"The fatwas of early scholars are no longer suitable for our current reality"?

This misunderstanding stems from a **fundamentally flawed perspective** regarding how Islam approached unprecedented occurrences (*nawāzil*) and human problems. Islam did **not** view these as purely economic or temporal challenges, nor did it treat life's problems as ever-changing. Instead, Islam treated them as **issues rooted in human nature**—and since **the essence of the human being is fixed**, the solutions governing his physiological needs, instinctual drives, and the resulting societal issues are also **permanent and unchanging**.

We have elaborated this in detail in our book *The Miracle of Islamic Legislation*.

However, in the context of contemporary *Fiqh al-Wāqiʿ*, *Fiqh al-Aqalliyyāt* (minority jurisprudence), and *Fiqh al-Muwāzanāt*, many of the applications are **mere justifications for abandoning established rulings**—such as the rulings on hijāb, jihad, and the prohibition of interest (ribā), among others.

Fiqh al-Wāqiʿ and the Danger of Being Submerged in Reality

The methodology of ijtihād (legal reasoning) consists of **three essential stages**, the first of which is: **accurate understanding of the reality** upon which a legal ruling is to be applied. This aspect of ijtihād is **not based on transmitted texts**, but rather on empirical inquiry.

For instance, when Māʿiz confessed to the Prophet ﷺ that he had committed adultery, the Prophet ﷺ continued to probe: "Perhaps you only kissed her?" "Perhaps you merely touched her?" He continued questioning him until the exact **nature of the act** became clear, thereby enabling the proper application of the **relevant Sharʿī ruling**.

The act of **adultery** warranted the ḥadd of stoning, but had it only been touching or kissing, the ruling would have been entirely different. Thus, **the precise nature of the reality determines the appropriate legal response**.

This is why the *prayer for a solar eclipse* differs from the *funeral prayer*. In the former, failure to perform two bowings (rukūʿ) invalidates the prayer; in the latter, adding a rukūʿ deliberately invalidates it.

The Prophet ﷺ said: "Whoever among you sees an evil, let him change it with his hand; and if he is unable, then with his tongue..." *Ṣaḥīḥ Muslim*. While the word "evil" (*munkar*) in this hadith is general, the **ruling for correcting the evil of a ruler** differs from that of others: If the ruler's wrongdoing does **not reach the level of open disbelief**, one is not permitted to change it by force. Thus, the **identity of the doer** impacts the **legal mechanism** for redress.

Therefore, true *Fiqh al-Wāqiʿ* is not about turning reality into **a source of legislation**, but about understanding it accurately in order to **apply Sharʿī rulings** derived from:

- The Qur'an,
- The Sunnah,
- Consensus of the Companions,
- And analogical reasoning (*qiyās*).

Judging Things Depends on Accurate Perception

As scholars have rightly stated: "Rulings on things are secondary to accurate conceptualization." If a scholar misperceives the nature of a given reality, his legal ruling will likely be flawed. Ibn al-Qayyim noted in *Iʿlām al-Muwaqqiʿīn* that a jurist must:

- Be a scholar of the religion,
- Be a scholar of reality (*wāqiʿ*),
- And know how to integrate the two through correct application.

We explained this method in our discussion on legal reasoning (*ṭarīqat al-ijtihād*). But none of this is found in what is now marketed as *Fiqh al-Wāqiʿ*! Our critique here does **not** target those who understand reality to derive rulings from **authentic texts**. Rather, we critique those who: **Make reality itself a source of thought**, instead of being its subject.

Reality as Source or Subject of Legal Reasoning?

The Islamic Ummah has been brought to the brink of collapse. Colonial powers imposed a reality upon Muslims rooted in the application of **secular systems that openly defy God**.
These powers not only attacked Islam's rulings—such as polygamy, insurance, and jihad—accusing them of failing to address modern problems, but they also presented their own solutions, then posed disingenuous questions:

- What does Islam say about insurance?
- Can Islam offer viable alternatives to international trade agreements?
- What is Islam's view on parliaments and elections?
- Does Islam approach legislation from a materialistic or psychological standpoint?
- Does it prioritize the "spirit" of the text or only its letter?
- Does Islam recognize personal freedoms like freedom of belief and freedom of expression?

They formulate problems specific to **capitalist societies**, then ask Islam to provide answers—often with **an accusatory tone**, implying that Islam is incapable of addressing these issues.
But **Islamic legislation is rooted in belief in:**

- Allah,
- His angels,
- His books,
- His messengers,
- And the Last Day.

In short, it is derived from the **Qur'an and Sunnah**, which are categorically recognized as **divine revelation**.
What is understood from these sources, whether general principles, legal maxims, technical definitions, or detailed rulings, is **Islamic legislation**.

New issues or problems **arising uniquely in capitalist societies** should first be examined on the **level of reality**, not through seeking a ruling that conforms to secular assumptions. The capitalist perspective on insurance, for instance, is **not a source of law** we must accept or consider binding.
Once the reality is correctly understood, we apply to it:

- Sharʿī texts,
- Legal principles,
- Maxims,
- And definitions.

We derive **the Islamic position** based on that, not based on whether it mirrors capitalist jurisprudence or diverges from it.

Islam is **not obligated** to provide solutions for problems that arise from **applying foreign systems** to Muslim societies. Especially not when the ruling in question is measured against **its alignment with secularism** and only accepted if it conforms.
If it agrees with secular liberalism, the fatwa is welcomed. If it disagrees, Islam is accused of being harsh, outdated, or incompatible with modernity.

Examples of Misplaced Questions and Faulty Framing

- **Tunisia (historically)** prohibited modest Muslim women from wearing hijāb in schools and hospitals. Instead of asking about **the ruling on such oppressive laws**, people asked: "What is the ruling on women removing the hijāb?"
- **France** imposed similar bans. Instead of issuing fatwas calling for *mass mobilization* and *civil disobedience*, minority fiqh scholars issued rulings **permitting women to remove the hijāb** and wear swimsuits in public swimming classes!
- **Muslims suffering poverty** due to the corruption of their rulers ask: "Is taking an interest-based loan to build a house permissible out of necessity?"

- **Widespread celibacy** due to economic hardship leads to the rise of illicit relationships. Islam is blamed, when the **real cause is the secular system** that destroyed economic and moral order. Fatwas then emerge permitting *"friend marriages"* or *misyār marriages*.

Correct Framing of Legal Questions

When Muslims are asked about **joint-stock companies**, the correct question is:
"What is Islam's ruling on this structure?" not whether Islam can imitate capitalism to stay "relevant." When asked about **banks**, the question should be: "What is the Islamic perspective on banks?" not whether Islam can replicate capitalist banking and permit interest "within reason." The reality is this:

- **Banks primarily operate on ribā**, both short and long-term lending, current accounts, credit lines, etc.
- They also transfer funds and safeguard deposits.
- Fund transfers and safekeeping are **permissible** in Islam.
- All **ribā-based transactions** are categorically prohibited, as Allah says: *{And He has forbidden usury (ribā)}* (Sūrat al-Baqarah, 2:275)

Conclusion:

Reality is not a **source** of thought; it is its **subject**. Sharʿī rulings are to be derived from the Qur'an and Sunnah and then applied to reality—not reverse-engineered from secular norms. It is a **grave threat** to this Ummah that many no longer realize:

Islam categorically refuses any authority other than revelation.

It is from this revelation that legal rulings are derived. Once the relevant reality is understood, we examine the associated evidences and apply the appropriate divine ruling—not the ruling of **rational conjecture**, **personal interest**, or **modern sensibilities**. It is never valid to craft "Islamic" solutions that mimic capitalist ideology—especially one that is **mired in repeated failures and social catastrophes**. This is not even possible, given the **fundamental conflict** between Islam and capitalism. No ruling is "Islamic" unless it is:

- Derived from revelation,
- Anchored in scripture,
- And grounded in the interpretive methodology of the Sharīʿah.

Even if a given solution *happens* to match a secular proposal, it is **not Islamic** unless it emerges **from within the Sharʿī framework**. To adopt these erroneous paradigms is, in truth, to **abandon Islam** and adopt the capitalist system.
Islam and capitalism are **inherently incompatible**, and any attempt at reconciliation is, in reality, an invitation to adopt disbelief (*kufr*) and reject divine guidance.
Such a path poses grave danger—not only to the Muslims, but to the integrity of Islam itself.

Sophistic Jurists on Trial: Prosecuting the Sharīʿah!

All praise is due to Allah, and peace and blessings be upon the Messenger of Allah.
There is no doubt that it has become firmly established by now that many proponents of so-called "fiqh of reality," "fiqh of weighing interests," and "minority jurisprudence" operate under the cover of dazzling slogans, ones that, to the unsuspecting ear, might resonate positively with Muslims. These include: *renewal*, *opening the gate of ijtihād*, *spirit of the Sharīʿah and its objectives*, *achieving public interests*, *bringing benefit and warding off harm*, *necessities make the prohibited permissible*, and *choosing the lesser of two evils*. Yet, upon deeper inspection of the *content* and the *methodology* by which these principles are applied—principles that are indeed genuine in their proper place—one finds a complete divergence between the slogans and the reality. These approaches depart entirely from the usūl (foundational legal principles) upon which such maxims were originally built.
With some of them, the matter escalates even further: they wield wrecking tools under the banners of *evolution*, *flexibility*, *modernization*, *breaking free from textual literalism*, *fiqh of reality*, *weighing of interests*, and *rational utility*. Under these pretenses, Islam is subjected to an unrelenting campaign—one that seeks to shift it from a divinely-revealed religion whose primary feature is its *heavenly origin*, into something that they portray as a collection of human opinions penned by jurists whose relevance, they claim, has long expired in the modern age of space exploration.

Under this guise, the rulings of the Sharīʿah are placed on trial by the advocates of these trends, with the intent of severing all connection between the Muslims and the revealed texts. Their aim is to propel Muslims into a new ideological orbit where they can "coexist" within frameworks that mirror the Western way of life.

Indeed, new issues emerge from time to time, and the Muslim Ummah does need fresh rulings grounded in the Qur'an and Sunnah to address these developments. But there is a fundamental difference between this genuine ijtihād and the outright prosecution of established rulings. Tragically—and this is no exaggeration—these individuals have not merely targeted classical juristic interpretations for critique or revision. Rather, some among them have gone so far as to prosecute and reject *the Qur'anic verses and Prophetic ḥadīth themselves*, pronouncing them unfit for our era. Nothing makes this clearer than their approvals of female imamate, rejection of the punishment for apostasy, denial of the ḥadd punishment of amputation for theft, and their sanctioning of usury (ribā). In doing so, they are in fact putting *revelation* itself, both its definitive and speculative aspects—on trial in order to please the disbelieving West.

As Dr. Muhammad Muhammad Ḥusayn (may Allah have mercy on him) insightfully observed: *The more sincere among them tend to stretch Islamic values to the farthest extent that the texts could possibly bear in order to conform to Western values. In doing so, they fall into the snares laid by the West for people like them. In their attempt to deflect the accusation of rigidity that Westerners level against the Sharīʿah, they veer sharply in the opposite direction—trying to showcase the flexibility of Islam to the point of sheer fluidity, ultimately stripping Islam of its distinct identity and foundational integrity. It thus becomes little more than a tail to any other system, susceptible to whims and trends. And in this way, they end up abolishing the very role of religion itself. Instead of using divine law to correct the distortions of modern life, they exploit the law—twisting it, to justify the distortions of contemporary life.* (Paraphrased with slight modification.)

These individuals do not stop at placing Islamic rulings on trial; they go further, attacking the *foundations* that were never historically contested among Muslims. They dismantle the very architecture of Islamic legal thought, leaving nothing in its place but utility, custom, convention, and present-day realities, all of which are foreign to the original structure of the Sharīʿah.

Now, had these reformers limited themselves to addressing novel issues—such as cloning, in vitro fertilization, insurance contracts, joint-stock companies, nuclear weaponry, or the use of medical life-support systems—and employed sound methodology to derive divine rulings from the Qur'an and Sunnah, in accordance with Allah's words: *"Whatever you differ in, the ruling thereof is with Allah. That is Allah, my Lord. In Him I place my trust, and to Him I turn in repentance."* (Qur'an, al-Shūrā: 10), or: *"If you dispute about anything, refer it to Allah and His Messenger—if you truly believe in Allah and the Last Day. That is best and most suitable for final determination."* (Qur'an, al-Nisāʾ: 59), and: *"We have sent down the Book to you as a clarification for all things, a guidance, and a mercy, and good news for those who submit.",* (Qur'an, al-Naḥl: 89), and: *"The command (ḥukm) belongs only to Allah. He has commanded that you worship none but Him. That is the upright religion, but most people do not know."* (Qur'an, Yūsuf: 40), then such efforts would be commendable, and we would say: they genuinely seek to bind Muslims to revelation.

But alas, that is not what they have done. Instead, they have focused their energy on *attacking established rulings*—subjecting them to critique, denial, and rejection. Worse still, they replace these rulings with alternatives tailored to Western sensibilities.

Their tone is effectively this: "How can our modern age possibly accept polygyny? It contradicts women's rights!" Or: "How can we continue giving men double the share of women in inheritance? How can we claim that women are deficient in intellect and religion?" Or: "In today's world, insurance is a necessity, how can we not permit it? How can we expect a merchant to lose tens of thousands of dinars when his goods are destroyed, or a man to exhaust his life's savings for a heart surgery?" Or: "The punishment of amputation for theft and stoning for adultery are incompatible with the Universal Declaration of Human Rights!"

And so, as you can see, their legislative sources are not the Qur'an and Sunnah, nor are they drawing new insights from legitimate interpretations of ambiguous texts (which might warrant being called *renewal* or *ijtihād*). Instead, they have made *contemporary reality* the source of their jurisprudence—severing it from the judgment of Allah. They have absolved themselves of the sacred standard: *"Allah said..."* and *"The Messenger of Allah ﷺ said..."* They have prosecuted the rule of Allah, dismissed it, and accused it of backwardness and irrelevance. And then, to mask the ugliness of their transgression, they dress it up in ornate slogans and embellished introductions that mislead the unwary regarding the reality of their so-called *fiqh*.

In what follows, we will examine some of those introductions and a sample of their legal verdicts, so that you may see just where they intend to take Islamic jurisprudence.

Some among them have become so brazen that they openly declare:

"What was considered truth a thousand years ago can no longer remain forbidden today, given the evolution of this age." And they continue: *"Because social relationships and circumstances have changed entirely, some rulings that were once expressions of divine truth no longer fulfill the objectives of the religion today. The means have changed, life conditions have evolved, and the consequences of enforcing certain rulings have been fundamentally overturned."*

One writer states: "Fiqh al-Wāqiʿ surrounding a legal incident means that the jurist issuing a fatwa should consider the changes in context—whether temporal, spatial, or circumstantial. These changes must be factored into the legal judgment, as many Sharīʿah-based ijtihād rulings are affected by such evolving conditions. Legal rulings are divinely mandated regulations aimed at establishing justice, procuring benefit, and repelling harm. They are closely tied to prevailing temporal means and societal ethics. A ruling that once served as a sound solution for a particular time and place may, over generations, lose its efficacy—or even lead to the opposite effect—as circumstances, tools, and values change. A careful observer of modern women's realities will note substantial transformations. Thus, clinging to outdated fatwas without updating them in light of changed circumstances is a betrayal of the Sharīʿah and an affront to its universality. It was on this basis that the legal maxim was established: 'Legal rulings change with the changing of times.'" (End of quote.)

But observe the deep contradiction here: in order for Islam to be valid for all times and places, it must, according to them, change with time and place. Its "universality," then, lies in its dissolution. And the arbiter of whether a ruling is obsolete, and of what should replace it, is none other than the human intellect. Revelation, in this view, was meant only for the Prophet ﷺ and societies akin to his; but today, it is no longer fit!

Therefore, it is unsurprising that one such figure boldly claimed that Jews and Christians are "believers" who, alongside Muslims, must unite against secularists. In *Qirāʾāt Siyāsiyyah*, issue 11/12 (1993), he wrote: "We must revise the old classifications of religions and reframe them into a new dichotomy: the religious and the non-religious."

Elsewhere in the same magazine, he stated: "Religion is universal, and God belongs to all. God did not draw natural or political boundaries, because all religions are universal."

But is this not precisely the creed of the secularists? That "religion is for God, and the homeland is for all"? Or that one should "Render unto Caesar what is Caesar's, and unto God what is God's"? Does his claim that "God belongs to all" not entail that the faith of Christians in God is equally valid, and that Muslims have no exclusive claim to true belief?

He continues:

"Abandoning religious partisanship and freeing oneself from sectarian bigotry is the key to genuine interfaith dialogue. If each adherent sets aside fanaticism for his sect and approaches the study of other religions with an open mind, he will most likely discover the shared origin and core values of these faiths. This is our call today: that the People of the Book should form a united front. In the Qur'an, 'the Book' refers to every scripture revealed from God."

Thus, Ḥasan al-Turābī calls for a joint front of the "People of Faith" Muslims, Christians, and Jews, on the basis of the Abrahamic faith. In an interview with *Al-Mujtamaʿ* magazine (issue 736, dated 8/10/1985), he stated:

"National unity is one of our greatest concerns. In the Islamic Front, we believe it can be achieved through Islam according to the foundational principles of the Abrahamic tradition that unites us with Christians through a shared historical heritage and a common moral and theological legacy. We do not want religion to be a cause of hostility, but rather a bond of brotherhood in the One God."

What he conceals in his call for "renewal" becomes clear when he openly rejects Islamic rulings and demands their replacement. In an interview with *Al-Wasat* magazine (07/11/1994), he stated: "I am among the most passionate advocates of freedom, more so than my brothers in the Islamic movement. If I rule, I will grant others their freedom. If others rule, I expect them to grant me mine. You know my opinion regarding the freedom of those who leave Islam, despite the criticism and controversy it has brought me." In another interview with *Al-Muḥarrir* newspaper (issue 263, August 1994), he said: "Let me add a personal opinion: even if a Muslim fully apostatizes and leaves Islam, and wants to remain outside the faith, then let him be. There is no compulsion in religion… no compulsion in religion. I do not say whether he has apostatized or not—that is his right to claim whatever he wants, so long as he does not corrupt the shared social order."

Thus, al-Turābī began theorizing for the "Abrahamic religion" well before it became a U.S. project. America then adopted and weaponized this notion to construct a new Middle East under its umbrella, using it as the basis for recognition and normalization with the Zionist entity.

These are the very rulings that, in their eyes, no longer suit the modern age! This, they say, is the *tajdīd* (renewal) they call for. These are the "developments" that, they claim, render Islam and its legacy rulings obsolete. Yet observe: the judgments they propose are grounded in neither revelation nor any detailed legal evidence. They bear no trace of Qur'an

or Sunnah. Their so-called *fiqh* mirrors the clerical abuses of past religious authorities who permitted the prohibited and forbade the permissible. In fact, they assault the very foundations of faith and creed.

On [April 17, 1995], *Der Spiegel* magazine conducted an interview with Dr. al-Turābī. He was asked: "But there is no unified interpretation of Sharīʿah. Should thieves have their hands and feet amputated? And should apostates be executed?" He replied: "These ḥudūd are not applied today in Sudan because our interpretation of Sharīʿah is more evolved than that of other Islamic countries. No one in our Islamic Popular Congress forbids women from holding public office or denies them the right to be head of state or prime minister."

So the "renewal" of jurisprudence they advocate is, in reality, the substitution of Western legislation in place of Islamic law. The pretense that the *nāzilah* (legal case) or contemporary reality now contains "new circumstances" requiring a change in fatwa is mere dust thrown into people's eyes. These are abstract generalizations unrelated to reality. What exactly has changed, for instance, regarding the issue of women assuming head of state? Nothing but the Western worldview—and America's approval. What has changed in the definitive Qur'anic ruling on amputating the thief's hand? Nothing but the Universal Declaration of Human Rights—and America's approval. What is new regarding Muslim participation in the political systems of disbelief? Nothing but submission to America's demands for forced democratization. And what has changed regarding the ḥadd (legal penalty) for apostasy in Islam? What *real-world change* could justify altering this? Only the framework of "dialogue among civilizations," America's approval, and the imported Western notion of "freedom of belief"—a freedom that the West itself violates, as it routinely denies Muslims their most basic rights and kills them in their own homes, simply because they are Muslim.

If we were to speak plainly and identify each supposed "circumstance" cited by these Westernized jurisprudents, those who beguile the people away from their religion—we would find not a single factor truly grounded in lived reality. What we find instead is a shift in lifestyle: from an Islamic way of life to one marked by hardship, deprivation, and fascination with the West. Their call, then, amounts to one thing: the divine ruling derived from detailed scriptural evidence is no longer suitable for implementation. Hence, they feel compelled to adopt its opposite. The forbidden becomes permissible. The permissible becomes disreputable. They wage a relentless war against it all, fleeing from the words of God and His Messenger like frightened wild donkeys fleeing from a lion.

Their rhetoric and this so-called jurisprudence of theirs have no relation whatsoever to Islam. They have nothing to do with knowledge. Muslims must reject them as filth is rejected. They must treat them with utter contempt. And they must declare, with pride, their allegiance to their religion and their Lord's sacred law—a law that offers true solutions to human problems, whose most distinguished feature is that it is *unchanging*, *divine*, *free from human whim*, and *perfectly just*. Only through it can humanity prosper in every time and place.

The role of the jurist is to correct the crookedness of life using the texts of the Sharīʿah, not to manipulate those texts to justify the crookedness of contemporary life. The way Muslims live today was never meant to serve as a *source* for legislation; rather, it is the calamity they must find a cure for through revelation, a cure that transforms their condition and enables them to resume the Islamic way of life, that they may flourish in both this world and the next.

The Dangers of the Modern Approach to Using "Maslahah" (Benefit)

From what has been presented, it is clear that the modern trend in deploying *maslahah*—under its various labels such as "Fiqh of Reality," "Maqāṣid" (Higher Objectives of the Sharīʿah), "Balancing of Interests," or "Fiqh of Minorities"—entails grave risks if it is not strictly governed by sound Islamic knowledge and sincere religious scrupulousness (*waraʿ*). The most prominent of these risks include:

- **Undermining the Sanctity and Authority of the Texts:**
  When it becomes commonplace to prioritize a perceived rational interest over the apparent meaning of the scriptural texts, a dangerous notion takes root—that the commands of the Qur'an and Sunnah are "secondary" and can be bypassed. This gradually erodes reverence for the Sharīʿah in people's hearts and makes human desire a hidden partner in the processes of declaring things lawful or unlawful, even if such people do not explicitly state this.
- **Opening the Door to False Interpretation:**
  Under the pretext of pursuing *maqāṣid*, one may come along and claim that every definitive text was only revealed for a temporary benefit which has since expired. This has already occurred. There are contemporary writers who openly claim that the rulings of inheritance, criminal punishments (*ḥudūd*), and polygamy were appropriate for 7th-century Arabian society, but today they conflict with "human rights" and must therefore be "updated." They falsely argue that the objectives of Sharīʿah, such as justice and equality, require such changes (see: middle-east-online.com). We seek refuge in God from such ruin.

- **Jurisprudential Incoherence and Contradiction:**
  Those who follow imagined interests are inevitably inconsistent, for they lack any stable standard. They may expand a legal dispensation here while narrowing it there based on nothing more than speculation. In contrast, one who follows the revealed texts remains consistent and grounded. The glaring divergences among contemporary theorists of *maqāṣid* on fundamental legal questions stem from their abandonment of a firm reference point. Their intellects and whims have diverged, leading to erratic outcomes.
- **Dilution of Muslim Identity and Assimilation into Western Civilization:**
  Many of the fatwas stemming from the so-called "Fiqh of Minorities" and "Fiqh of Balancing" have facilitated Muslims' assimilation into the Western model—even when it contravenes core tenets of Islam. Due to these fatwas, many Western Muslims today feel no shame if their wife works unveiled in public, or if they tolerate their children engaging in unlawful relationships, or even if they drink alcohol "in moderation" all under the pretext of "integration" and "benefit"! This is a dangerous departure from Islamic ethics, and a surrender of its principles, one after the other, until Islam remains in name only, emptied of its essence. The Prophet ﷺ warned: "You will surely follow the ways of those before you..." (Hadith) And today, such imitation often enters through this gateway of fabricated "maslahah."

Our Final Position in This Chapter

We say—emphatically and without hesitation—**no**, and a thousand times **no**, to turning *maslahah* into a super-legislator placed above the Qur'an and Sunnah. The Sharīʿah is sovereign, not subject to subjugation. It is authoritative, not subordinate. Any approach that gives precedence to current realities over revelation is, in truth, an attempt to twist the texts to conform to the dominant materialist civilization. This is an unacceptable intellectual defeatism.

And experience—both past and present—has shown that whoever compromises once in the name of *maslahah* will inevitably be pressured into further concessions, until he loses both his religion and his worldly dignity. But whoever remains patient upon the principles of the Sharīʿah may forgo an immediate material gain, yet he earns the pleasure of Allah and preserves the identity and unique character of the Muslim Ummah.

By Allah, no people ever abandoned something for the sake of Allah except that He compensated them with something better.

Let this be our creed, and let us live by it, so that we are not swept away by the mirage of imagined interests, which are in truth real and ruinous dangers.

Chapter Four: Reason in Epistemology and the Method of Sharīʿah-Based Inference

Executive Summary of Chapter Four: The Maxim "No Ijtihād with an Existing Text" and Its Proper Scope

This chapter examines one of the most contested and misapplied principles in contemporary Islamic legal discourse: the maxim **"No ijtihād where a text exists"**. The objective is to clarify its precise, orthodox meaning and to expose the distortions introduced by modern rationalist narratives that invoke this principle only to circumvent revelation in favor of reason or utility.

The author distinguishes between two fundamentally different interpretations of the maxim:

1. **The Correct Usulī Interpretation:**
   Ijtihād is impermissible in cases where an explicit text exists that is both *definitive in transmission (thubūt)* and *definitive in meaning (dalālah)*. In such instances, the revealed text suffices and there is no need, indeed, no room, for personal opinion. Reason is not to be used to override revelation. However, when a text is either *speculative in its transmission* or *speculative in its indication*, then sound legal reasoning (*ijtihād*) becomes necessary, operating under the established principles of *uṣūl al-fiqh* to derive the ruling from the text.
2. **The Distorted Modern Interpretation:**
   This claims that the maxim restricts intellectual freedom and should not be applied in contemporary circumstances. It opens the door to the suspension of scriptural texts under the pretense of "contextual understanding," "accommodating change," or "meeting the needs of the times."

The chapter explains how certain contemporary reformists, in the context of their broader renewal projects, have diluted this principle. They argue that texts are only applicable to the historical and cultural circumstances of their revelation. If those conditions change, the text may be bypassed in favor of a new judgment rooted in utility, context, or so-called *maqāṣid* (higher objectives). The author demonstrates how this logic contradicts the very core of revelation, whose message is universal, timeless, and divinely preserved in its objectives and substance.

The chapter then analyzes the methodological confusion among those who advocate bypassing revelation. It shows how they conflate texts that are open to ijtihād—i.e., speculative texts—with those that are definitive and binding, misappropriating the tools of "maqāṣid reasoning" or "utilitarian ijtihād" to reinterpret even those rulings that carry definitive proof (*qaṭʿī al-thubūt wa al-dalālah*).

The author also refutes several contemporary misconceptions, such as:

- "The Prophet ﷺ himself exercised worldly judgment—why can't we?"
- "The Companions sometimes departed from hadith—why can't we?"
- "Sometimes, *maṣlaḥah* (public interest) is more compelling than the scriptural text."

Each of these is addressed through rigorous reference to foundational *uṣūlī* principles and a precise understanding of the scholarly tradition.

In conclusion, the author affirms: The proper role of reason in relation to revelation is **to understand** the divine text, not **to override** it. Reason that is not disciplined by revelation inevitably deviates. Opening the gates of unbounded ijtihād without adherence to the established methodological safeguards is the beginning of the secularization of Sharīʿah, turning divine guidance into man-made speculation governed by societal norms and personal whims.

Sources of Knowledge in Islam: Revelation, Reason, and Sensory Perception

Human knowledge arises from three primary sources:

- **The External Senses:** These are man's portals to perceive and receive information from the tangible external world (such as hearing, sight, and touch).
- **The Intellect:** This is the faculty responsible for analyzing sensory data, engaging in abstraction, and drawing logical inferences.
- **Revelation:** This refers to that which God conveys to humankind—be it information or commandments—either directly to the prophets or through divine scriptures.

In the domain of religious knowledge—pertaining to beliefs and laws—**revelation** plays the foundational role. It is the only source that provides knowledge of the unseen and of God's commands, which the unaided intellect has no independent access to. Reason's role is to **receive, comprehend, and apply** revelation. It acts as a servant to revelation: deriving legal rulings from it, applying it to real-world contexts, and using it to construct arguments for the faith.

Reason: Its Role and Limits in Sharīʿah

Reason is a tremendous gift, and God has made it the basis for moral responsibility (*taklīf*). There is no legal obligation upon the insane or those lacking sound cognition. God has honored the intellect by frequently calling upon it in the Qur'an: "Will you not use reason?" "That they may reflect," "Indeed in that are signs for those of understanding," and many more.

In Islam, the intellect is a means to **faith**, contemplating the universe and the self to infer the existence and oneness of the Creator. It is also a means to understand revelation and ponder its meanings. One cannot conceive of understanding the Qur'an and Sunnah without an intellect engaged in extracting and interpreting their meanings. This unique faculty was bestowed upon humans to elevate them in both knowledge and faith.

However, the All-Wise Lawgiver—who created reason—also knows what nurtures or corrupts it, and has outlined clear boundaries for its use so it does not stray:

- **First**, the intellect is limited. It cannot access the unseen realms or comprehend human welfare in full independence. Therefore, revelation came to supply what reason cannot reach. For example, the mind may affirm the existence of a Creator, but it cannot define God's attributes or the realities of the unseen. Revelation completes this gap. Reason recognizes the general goodness of justice and the evil of oppression, but the intricate legal details that realize justice are not fully within its capacity—so revelation provides them through text.
- **Second**, the Sharīʿah warns against two afflictions of the intellect: *desire (hawā')* and *doubt (shubhah)*. Desire misguides by beautifying falsehood. Hence, the Qur'an states: "And do not follow desire, lest it lead you astray from the path of God" (Ṣād: 26). Doubt is confusion in understanding or the reception of a false idea that leads astray if the intellect is not fortified with knowledge. Thus came the command to seek knowledge, verify claims, and refrain from delving into what one does not master.
- **Third**, the most critical boundary: the intellect must not transgress its domain. That is, it should halt at the limits of what it can comprehend, and submit to what lies beyond. This is especially evident in matters of the unseen. For example, the mind cannot conceive of God's essence, nor even the true nature of the soul or instincts. Its role is to believe and submit to what God reveals about Himself.

Similarly, in legislation: the intellect might not grasp the wisdom behind some rulings. It is not permitted, then, to reject them, nor to demand the wisdom before obeying. For instance, why is the dawn prayer two rakʿāt instead of four? This lies beyond the comparative capacity of reason, so the believer submits purely to divine command. If the wisdom is apparent from supporting legal indications, then it is a blessing; if not, then belief in God's perfect wisdom and knowledge suffices the intelligent believer.

Misuse of Reason in Theology and Law

Some scholars mistakenly attempted to strike a balance between reason and revelation by separating their domains—assigning reason to theology (*ʿaqīdah*) and revelation to legal matters (*sharīʿah*). In belief, they claimed, one is obligated to use reason to establish God's existence and some of His attributes, such as knowledge, power, and creative force—attributes that are evident in the universe. However, other attributes like mercy or severity in punishment are not observable in the cosmos and thus await revelation to define them.

Once the intellect affirms the truth of prophecy and miracles, it is no longer a judge over revelation. It must submit to the divine message and cease to interrogate it. One cannot, for example, question the justice of God's punishment of disbelievers, for the human intellect lacks the comprehensive tools to grasp the full dimensions of divine justice, nor may it equate divine justice with human standards.

In legislation, reason is restricted to understanding and deriving meaning—it has **no authority** to legislate or enact laws. There is no such thing as a "pure intellect" or "universal rationality"—every person possesses his own mind, biases, views, and desires. Thus, **reason is completely excluded** from being a source of legislation. This was already definitively established in the first chapter of this book.

Hence, it is categorically mistaken to compare reason and revelation in matters of law. Consider the statement of Shaykh al-Islām Ibn Taymiyyah:

"Pure reason does not contradict authentic transmission. Rather, it attests to and confirms it... Yes, there may be in the texts what reason cannot comprehend, but not what it deems impossible."

Many religious matters surpass human comprehension but do not contradict it. The claim that "pure reason never contradicts authentic transmission" is itself false, having no basis in intellect or revelation. Reason simply does not have that role in Islam—except in theological proofs based on rational evidence, as previously discussed.
Sharīʿah has unambiguously declared that **revelation is the sole source of legislation**—not reason. As Allah says: "Follow what has been revealed to you from your Lord, and do not follow besides Him any allies. Little do you remember." (al-Aʿrāf: 3), So following revelation through the intellect's effort to derive meaning from the texts is the desired path. This verse affirms it as an uncontested principle, worthy of remembrance: "Little do you remember."

The Parable of Reason's Role

Imām al-Shāṭibī offered a profound analogy regarding the relationship between reason and revelation:
The wisdom behind Sharīʿah and the rationale for its rulings is too vast for individuals to grasp independently. Thus, God preserved the objectives of His law by sending messengers. Our role is to understand those objectives and act upon them—not to invent new objectives from our own minds.
Thus, the statements of the Salaf are numerous in warning against using pure reason in religious matters. ʿAlī ibn Abī Ṭālib (may God be pleased with him) said: "Had religion been based on opinion, the bottom of the leather sock would have been more deserving of being wiped than the top. But I saw the Messenger of Allah ﷺ wipe the top of his socks." (Related by Abū Dāwūd with a good chain of narration.)
This means that the devotional nature of legal rulings may sometimes go against what intellect alone deems logical serving as a test of obedience and a check on intellectual arrogance. Intellect might say that wiping the bottom of the sock cleans better, but the Sharīʿah commanded wiping the top as a symbol of the comprehensiveness of ritual purity. The believer obeys. Thus, our scholars have always said: "Ijtihād is the exertion of effort to **seek a probable ruling** from the Sharīʿah"—not to **create** a ruling.
This is explicit in the hadith of Muʿādh ibn Jabal: "I will exert my reasoning and spare no effort." He did not say: "I will legislate by my opinion," but that he would search diligently within the revealed texts, and if he did not find a direct text, he would apply analogy (*qiyās*). We have already elaborated on this hadith and its correct interpretation in our book *The Miracle of Islamic Legislation: Its Characteristics and Foundations*.

Qiyās: Reasoning Bound to Revelation

Scholars have placed precise conditions on *qiyās*, or analogical reasoning. It is purely an intellectual exercise, but it is strictly bound by its pillars:

1. An established *asl* (original case),
2. A *farʿ* (new case),
3. A *ʿillah* (effective cause), and
4. A *ḥukm* (ruling).

Qiyās is not license to fabricate rulings and attach them to Islam. The original ruling must be grounded in a revealed text and linked to a discernible, legally recognized cause shared with the new case. Any analogy not meeting these conditions is rejected as invalid.
Hence, the intellect functions here **in service to the text**, identifying shared features to apply the same ruling in accordance with God's intent, not human imagination.

Scholars' Statements: Reason as Servant, Not Legislator

To conclude this chapter, we present a collection of scholarly statements across Islamic history that affirm the consensus that reason follows Sharīʿah, and not vice versa:

- **Imām Aḥmad ibn Ḥanbal:**

"It is not objectionable for one to adhere to transmitted reports and reject speculative opinion." (Referring to personal analogical reasoning not grounded in revealed precedent.)

- **Imām al-Shāfiʿī:**

"Whatever the Messenger of Allah ﷺ legislated, we must follow; it is not permissible to oppose it." He also said: "Whoever deems something good (*istihsān*) has legislated."

- **Ibn ʿAbd al-Barr:**

"Whoever seeks religion through reason alone is misguided, and whoever seeks it through sound transmission has attained it."

- **Al-Ghazālī in *al-Mustaṣfā*:**

"There is nothing more perfect that could have been than what already is." Meaning the divine law is already in its most perfected form—reason cannot imagine a superior alternative.

- **Ibn Taymiyyah:**

"Sound reason agrees with the religion. Reason alone cannot comprehend all benefits and harms—it requires prophetic clarification."

- **Ibn al-Qayyim:**

"Sharīʿah is founded upon wisdom and the welfare of humanity… But not all its wisdoms are known to us. At times they are hidden, and our obligation is submission."

These and other statements demonstrate a unified scholarly conviction: legislation belongs solely to God and His Messenger. Reason is a tool for understanding, not for lawmaking. Even the Muʿtazilites—who were most known for championing reason—restricted its role to theological issues and moral valuations. They never claimed that reason alone could produce divine law. We do not endorse their theological method, of course—but it proves the point that using unaided reason as a source of legislation is an alien notion, unaccepted by any authoritative group within Islam. If rare deviant opinions exist, they are unanimously rejected. Today, however, this notion is promoted under modern slogans such as "human rights" and "renewal of Islamic law," which require critical deconstruction, as we have done.

In Summary

The intellect is a luminous faculty created by God for humans to know their Lord, understand His Sharīʿah, and govern their worldly lives in accordance with His path. It is a **means**, a **servant**, not a **master**. Revelation elevates reason, it does not burden it with what lies beyond its capacity. God spared it from delving into the unseen or enacting comprehensive legislation, but gave it broad scope to reflect, analyze, and apply revelation.

Whoever uses reason in obedience to God has truly reasoned and succeeded. But whoever worships their intellect or desires has gone astray and suffered loss. We ask Allah to inspire us with right guidance, and to protect us from the evils of our own souls.

Chapter Five: Modern Rationalist Schools from the Era of Abduh and Afghani to the Present — A Methodical Critical Analysis

Executive Summary of Chapter Five: Modern Rationalist Schools from the Era of Abduh and Afghani to the Present

This chapter offers a historical and analytical study of the emergence and development of what has become known as the "Reformist Rationalist School" in modern Islamic thought. This school began in the late 19th century with figures such as Jamal al-Din al-Afghani, Muhammad Abduh, and Rashid Rida. The chapter aims to demonstrate that—despite its reformist slogans, this school intellectually paved the way for elevating "reason" and "utility" as sovereign sources over the revealed text, rather than being subordinate to it. This shift led to a radical transformation in Islamic thought among wide sectors of intellectuals and later thinkers.

The chapter opens by presenting Muhammad Abduh's major ideas: reinterpretation of scriptural texts, emphasis on moral and social objectives, and controversial fatwas in the name of utility (such as the permissibility of bank interest, modifications to marriage and divorce laws, and revisions to the conditions set by endowment donors). It also examines the influence of his teacher, al-Afghani, who was more focused on politics but instilled intellectual audacity and critical skepticism toward tradition in his students.

The chapter then explores Rashid Rida's role as inheritor of Abduh's project and how he expanded it—before leaning toward a limited form of Salafism later in life. It traces how this school then split into two currents: a relatively conservative one (e.g., Mahmud Shaltut) and another progressive, liberal, and secularist (e.g., ʿAli ʿAbd al-Raziq and Ṭāhā Ḥusayn). The school later expanded through the 20th century with intellectual programs such as "Liberal Islam" and "Civil Islam."

The chapter highlights this school's influence on contemporary currents, including:

- **Yusuf al-Qaradawi**, with his utilitarian fatwas on riba (usury), working in conventional banks, festive greetings, music, etc.
- **Ahmed al-Raysuni**, with his maqāṣid-based methodology that places high weight on maslaha (interest/utility).
- Thinkers like **Muhammad Shahrour, Jamal al-Banna, Tariq Ramadan, and Jasim Sultan**, who all promote "contemporary readings" that seek to adapt revelation to modern paradigms.

The chapter also analyzes how this school played a key role in reinterpreting the Sharīʿah in light of modernity, under the influence of Western philosophical trends. This effectively opened the floodgates to Westernizing rationalism under the guise of "maqāṣid-based ijtihād", wherein the scriptural text no longer judges reality—instead, reality judges the text.

The chapter concludes with a strict critique of this trajectory, asserting that the so-called "Reformist Rationalist School" laid the groundwork for a partial secularization of the Sharīʿah under the name of renewal, producing a dangerous fracture in the ummah's understanding of divine revelation. It calls for a return to the established usūlī methodology, which makes the text the foundational source and places reason as its servant—not its sovereign.

Chapter Content:

Introduction: The Roots of the Reformist Rationalist School

Since the late 19th century, the Islamic world witnessed the emergence of a new intellectual trend known as the "Modern Rationalist School" or "Reformist Movement." This trend is tied to prominent figures like **Jamal al-Din al-Afghani (1838–1897)**, **Muhammad Abduh (1849–1905)**, and **Muhammad Rashid Rida (1865–1935)**, among others. These reformers championed slogans of **revival and renewal**, advocating for the **elevation of reason** and the **liberation of thought from rigid imitation (taqlīd)**, to the extent that reason was made supreme, even above revelation.

Their movement represented an attempt to **reconcile Islam with both its inherited legal tradition and the spirit of the modern West**, seeking a hybridized framework of religious commitment and civilizational progress. This chapter critically examines the role of this school along seven key axes:

1. Elevation of reason and utility over revelation in legislation.
2. Reinterpretation of religious texts through utilitarian or symbolic readings under modern influences.
3. Laying the groundwork for dismantling traditional legal structures and unleashing unbounded "renewal."

4. Adapting Islamic thought to nationalist, liberal, and socialist currents and coloring Islam with these ideologies.
5. The influence of Freemasonry and the pan-Islamic project in shifting the ummah's unity from a religious to a political-nationalist identity.
6. The school's direct links with Egypt's modern intellectual elite, and its influence on contemporary ideologies like **liberal Islam**, **minority fiqh**, **fiqh of balancing interests**, and unregulated **maqāṣid fiqh**.
7. A critical review of their methodology and assumptions, as critiqued by scholars like **Dr. Muhammad Muhammad Hussein** (especially in *Our Fortresses Are Being Undermined From Within*), **Anwar al-Jundi**, **Abu al-Hasan al-Nadwi**, **Ziyad Salama** (in his study on Hassan al-Banna), and others.

Each of these axes will be explored in detail, analyzing the school's effect on how Muslims think about revelation, scripture, and religious authority. Comparisons will be drawn between traditional usūlī understandings and the reinterpretive frameworks of the modern rationalist school, supported with documented sources and structured tables.

Practical Examples of Prioritizing Utility (Maṣlaḥa) Over Revelation

The fatwas of Imam **Muhammad ʿAbduh** serve as one of the clearest examples of this methodology. He issued a legal opinion permitting **interest on funds deposited in postal savings accounts** (a government savings institution at the time), claiming it constituted a "lawful benefit and a modern form of investment," not the forbidden riba (usury). ʿAbduh based this on a distinction he considered "rational": between the explicit, excessive, compounded riba condemned in the Qur'an and the limited bank interest, which he viewed as a form of financial cooperation.

In reality, this fatwa contradicted the **consensus of Islamic scholars**, since the ḥadīth of the Prophet ﷺ is clear: **"Every loan that brings a benefit is riba."** At the time, the fatwa sparked major controversy, and many viewed it as a **legalization of prohibited usury**. Prominent scholars such as **Shaykh al-Azhar Salīm al-Bishrī** and **Muhammad Bakhīt al-Muṭīʿī** (the Grand Mufti of Egypt) strongly opposed it. Even his student, **Rashīd Riḍā**, hesitated over it before eventually defending it.

ʿAbduh also introduced changes to **charitable endowment (waqf) laws** on the pretext of economic benefit: he permitted replacing endowment assets and **disregarding some conditions set by the original donor** if the ruler saw utility in doing so. This contradicted the firmly established fiqh principle that **"the condition of the endower is like a revealed text,"** which was upheld especially by Ḥanafī jurists. Yet ʿAbduh believed that the interests of a modern society required flexibility in endowment management to ensure public benefit rather than locking them into outdated conditions.

There is no doubt that these fatwas and legal shifts were based on **prioritizing "utility" in its modern sense**. The new rationalist school came to define maṣlaḥa primarily as **direct worldly benefit—economic or social—even if it conflicted with the apparent meaning of Sharʿī evidence**. They assumed that even Qurʾānic texts with definitive wording and meaning could have been directed to specific historical contexts, or that their rationale (ʿillah) was to realize a temporal benefit—so if that benefit no longer applied, the ruling could evolve.

Thus, in their framework, **Sharʿī rulings evolve with changing human interests.** Here emerged the centrality of **"Maqāṣid al-Sharīʿa"** (the higher objectives of the law) as a conceptual tool in their thinking. However, they **revived the term with a meaning different from the classical understanding**: instead of using maqāṣid to understand the fixed wisdoms of rulings, they used it as a basis for **altering** and **reconstructing** rulings.

The result of prioritizing **reason and utility over revealed text** was a dangerous paradigm shift: **Revelation became subordinate to human intellect** in many instances. This opened the door to extensive transgressions under the guise of "serving the objective" or "realizing utility," even when it came at the expense of unequivocal aspects of the Sharīʿa.

Symbolic and Utilitarian Reinterpretation of Revelation Under the Influence of the Age

Beyond legal fatwas, **rationalist thinking also influenced the interpretation of Sharʿī texts themselves**. Reformers adopted a **free interpretive approach**, particularly toward Qurʾānic verses, aligning them with **modern scientific discoveries** and the **"spirit of the age."**

Muhammad ʿAbduh and **Rashīd Riḍā** co-authored the **Tafsīr al-Manār**, which became a flagship example of this orientation. In his tafsīr, ʿAbduh focused on the **moral and social dimensions** of Islamic law, often linking verses to broad, rational objectives—even if that required abandoning their apparent meaning. For example, he interpreted the **disjointed letters (al-ḥurūf al-muqaṭṭaʿāt)** at the beginning of certain surahs with **symbolic, rationalistic meanings**,

in contrast to earlier exegetes who either left their meanings to God or interpreted them through established linguistic or theological methods.
He was also reported to have **rationally reinterpreted some prophetic miracles**, such as the **Isrāʾ and Miʿrāj** (Night Journey and Ascension). ʿAbduh is said to have **denied the physical ascent to the heavens**, instead viewing it as a **spiritual vision or dream**. As some researchers put it, ʿAbduh sought to **"narrow the gap between the unseen (ghayb) and the visible world (shahāda)"** through bold reinterpretive strategies.
He often employed **modern Western scientific discoveries** to explain supernatural phenomena found in the Qurʾān and Sunnah—trying to **make religion consistent with material science**. His stated motive was to **remove what he saw as irrational beliefs and superstitions** from the minds of people and to **present Islam in a way acceptable to the modern Western mindset**.

Examples of Rationalist Reinterpretations

Scholar **Ghāzī al-Tūbah**, who studied the biographies of ʿAbduh and Riḍā, listed many examples of such rationalist reinterpretations. For instance:

- **Jinn**, as mentioned in the Qurʾān, were reinterpreted by ʿAbduh as **microbes observable under a microscope**.
- **"Al-naffāthāt fī al-ʿuqad"** (those who blow on knots, Qurʾān 113:4) were interpreted as **gossips** who destroy human relationships.
- **"Ṭayr Ābābīl"** (the birds that destroyed the army of the Elephant) were reimagined as **a type of mosquito or fly**, and the **"stones of baked clay"** (ḥijārah min sijjīl) that they dropped were interpreted as **smallpox or measles viruses**.

Even more drastically, ʿAbduh is said to have **rationalized the miracle of Jesus's birth**, proposing two possibilities:

1. That it resulted from **a powerful psychological belief** in Mary's heart that caused conception (a mind-body effect).
2. That **a subtle spiritual force** was sent by God to fertilize her womb **without a father**.

Both of these interpretations **contradict the Qurʾānic text**, which clearly states that **Jibrīl breathed into her garment** by God's command, and that she was given **glad tidings of a son born without a father.**

These examples reveal the **depth of ʿAbduh's influence by Western materialist civilization** in how he approached revelation. He sought to **bend the necks of unseen, supernatural texts to match scientific discoveries of his time**. His proclaimed motive was to **purge the religion of irrationalities and present it credibly to modern minds**.
He also **criticized many Sufi practices and popular religious beliefs**, calling them superstitions. While this was a positive reformist effort when aimed at removing **innovations and shirk**, his project ultimately extended to **rationalizing even clearly established Sharʿī texts** on the grounds that they conflicted with **modern conceptions of reason**.

The Influence of Western Thought on Textual Interpretation

It is no secret that the **spirit of the age**—especially **secular Western thought**—had a significant impact on the interpretive approach of the reformists. **Ghāzī al-Tūbah** notes: "Muhammad ʿAbduh sought to narrow the gap between the unseen (ghayb) and the empirical world (shahādah) through interpretive maneuvers, relying heavily on the material discoveries of Western civilization in the fields of science and nature" (aljazeera.net).
This was reflected in **attempts to explain miracles and unseen matters using empirical material logic**. For example, when **Darwin's theory of evolution** emerged, some of ʿAbduh's students—like the Egyptian judge **Muhammad Farīd Wajdī**—inclined toward reconciling it with the Qurʾānic account of Adam's creation. They reinterpreted the Qurʾān and Sunnah's accounts of **Adam and Ḥawwāʾ (Eve)** in **symbolic rather than literal terms**.
This symbolic-utilitarian interpretive trend led to **a dangerous outcome**, as critics pointed out: **it opened the door to stripping revelation of its certainty and reverence.** Any meaning could potentially be reinterpreted or dismissed if it **did not align with the "reason" of the modern mind or "interest" as subjectively defined**.
The late Dr. **Muhammad Muhammad Ḥusayn** warned of the gravity of this trend, writing:
"Some sincere intellectuals among them have inclined Islamic values as far as the texts will allow toward Western values—thus falling into the snares of the West. Fearing that the Sharīʿah might be accused of rigidity—as claimed by Orientalists—they deviate to the opposite extreme to demonstrate its flexibility, until this flexibility becomes fluidity and lack of identity. Sharīʿah then becomes subordinate to any system, trailing behind desires. Thus, they effectively

annul the role of religion, for instead of using revelation to rectify the deviation of life, they manipulate revelation to justify the deviation of contemporary life."

These words, written decades ago, eloquently summarize the **end result of unrestrained rational reinterpretation**: religion becomes **a tool for justifying reality**, rather than a **standard by which reality is judged**.

To be fair, **Rashīd Riḍā himself later recognized the dangers of some of the interpretations that became widespread after ʿAbduh**. He witnessed the consequences of **extreme Westernization in Egyptian society**—such as **Qāsim Amīn's writings calling for women's liberation** and the **rise of a type of atheism**—and **retracted some of his teacher's views**, calling for moderation. In his final years, he **gravitated toward the methodology of the Salaf**, distancing himself from many unnecessary rational interpretations. This indicates that **unbounded interpretation brought about transgressions** that even the pioneers of the movement were eventually forced to reconsider.

The Dismantling of the Traditional Usūlī Framework and Unrestrained Renewal

A direct consequence of **prioritizing reason and utility**, and of **symbolically reinterpreting the texts**, was that the **rational reformist school laid the groundwork for dismantling foundational elements** of the classical usūlī (legal-theoretical) methodology, which had been developed over centuries.

The pioneers of this school **attacked the principle of "taqlīd" (adherence to a madhhab)** and called for **reopening the gates of ijtihād** (independent reasoning), which had been largely closed in later centuries. In principle, this was a **commendable call to revive legitimate ijtihād**, but the problem was that they **often failed to adhere to the traditional conditions** of valid ijtihād. Some even showed an inclination to **dismantle established legal principles** when they were seen as obstacles to the "development" they sought.

This was evident in their **dismissal of scholarly consensus (ijmāʿ)** or in **promoting fringe opinions for the sake of some presumed benefit**. We have seen how ʿAbduh contradicted the consensus on the prohibition of interest by distinguishing postal deposits, and how he departed from established fiqh in matters of endowment. The problem **later expanded**, with some followers of this school going so far as to **put the texts themselves on trial**.

Tragically, some of the **new rationalists went beyond critiquing scholars and their ijtihād**—they began **criticizing and rejecting authentic ḥadīths and Qurʾānic verses** under the claim that they were no longer "suitable" for our age. In doing so, they were **subjecting divine revelation—both definitive and speculative—to the judgment of modern secular values**, all in an effort to appease the disbelieving West!

This was the path taken by the most extreme modernists after ʿAbduh and Riḍā—figures like **ʿAlī ʿAbd al-Rāziq** and **Ṭāhā Ḥusayn**, who (as we shall discuss later) **rejected authentic texts** or **reinterpreted Islamic history through a purely materialist lens**.

Their discourse aimed to **dismantle several constants of the Sharīʿah sciences**:

- They **denied the authority of certain Prophetic ḥadīths**, claiming they contradicted reason or science.
- They **cast doubt on clear Qurʾānic rulings**, arguing that they conflicted with modern human rights—such as the **punishments for apostasy or ḥudūd penalties**.
- Some even called for **setting aside all scriptural evidence**, relying instead on **interest (maṣlaḥah), custom (ʿurf), and social reality (wāqiʿ)** as sole determinants.

They **did not merely place Sharīʿah rulings on trial**, but went further—**attacking the very foundational principles that had never been disputed**, reducing all jurisprudential authority to subjective assessments of utility, custom, and social trends. Yet these are not independent sources of legislation in Islamic law—they are **governed by revelation**—but they were treated as **primary sources** by these reformers.

In other words, they arrived at a **fluid legal framework**, in which **reason, interest, and reality** were **prioritized over revelation**. If a text aligned with their preferences, they applied it; if not, they deemed it "contextual," reinterpreted it, or discarded it outright.

Thus, while they claimed to open the gate of ijtihād and tajdīd (renewal), they did so **without adherence to the scholarly methodology** laid out by the usūlīs to protect interpretation from deviation. For these extreme renewal advocates, **nothing was off-limits**—from **Islamic family law**, to **the political system**, to even **the clearly established religious obligations**—all under the banner of reform and adapting to time and place.

Renewal Between Usūlī Methodology and Western Unruliness

To illustrate, the following table compares the **traditional usūlī understanding** of several key legal concepts with the **reinterpretations offered by the modern rationalist school**, and how that has impacted Islamic legal structure:

Sharʿī Concept	Traditional Usūlī Understanding	Modern Rationalist School's Reinterpretation
Reason (ra'y)	A faculty to understand revelation and derive rulings, but not infallible. Clear reason never contradicts sound revelation.	A primary legislative source. Elevated above revelation when conflict arises. All rulings must be rationally justified, or they're subject to change.
Sharʿī Texts	Qurʾān and Sunnah are the basis of law. Their apparent meanings are binding unless clear evidence dictates otherwise. Interpretation follows language and usūl rules.	Texts are bound by their historical context. Can be reinterpreted or marginalized if they conflict with modern rationality or progress. Many texts are treated as speculative or revisable.
Consensus (ijmāʿ) & Legal Heritage	Binding consensus of companions, scholars, or the Ummah safeguards legal continuity. Fiqh heritage is cumulative, principled scholarship.	No consensus is binding if it contradicts present interests. Classical fiqh is dismissed as outdated "rigidity." Some even ignore consensus on fundamental rulings like riba.
Public Interest (maṣlaḥah)	A valid rationale under specific conditions: must not contradict texts or consensus. Used cautiously in analogy or unrestricted interest (maṣlaḥah mursalah).	Expanded beyond limits—sometimes even abrogating texts. Interest becomes what reason sees as beneficial now. They sloganize: "Wherever the interest lies, there is God's law," in a modern, not usūlī sense.
Maqāṣid al-Sharīʿah	The overall objectives of Sharīʿah (preservation of religion, life, intellect, progeny, and wealth). Their role is to guide—not override—textual rulings.	Used as a tool to **alter** rulings under the claim of fulfilling a "higher objective." Renewal of religious discourse becomes code for aligning rulings with modern values like absolute freedom and equality.
Ijtihād and Tajdīd	Exerting effort to understand texts and apply them to new circumstances while adhering to usūl. Renewal means reviving faith, refuting doubts, and contextualizing rulings without altering them.	Ijtihād is nearly unrestricted. Every ruling can be reconsidered in light of change. Renewal means **constant reshaping** of the religion to suit modern civilization—even if it cancels foundational laws.

Note: The table above illustrates how **modern renewal efforts have sometimes slipped into methodological chaos**, neglecting the usūlī constraints developed over centuries, and **favoring subjective reason**. **Abū al-Ḥasan al-Nadwī** warned of this when he said:
"Religion distinguishes between sound change and unsound change, between destructive inclinations and constructive ones." (al-maktaba.org)
So not every change is welcome—**only that which conforms to the religion's principles and foundations.**

In summary, while the modern rationalist school pursued reform with sincere intentions, it ultimately **undermined trust in traditional legal authority**, and **opened the door to a wide range of ideologies claiming renewal**, many of which crossed Sharʿī boundaries. This has resulted in **intellectual fragmentation and division**.

4. Adapting to Nationalism, Liberalism, and Socialism in Reformist Thought

Afghani and ʿAbduh raised the slogan: *"Religious reform is the path to social and political revival."* To this end, they adopted—or at least sympathized with—nationalist and liberal currents that swept through the Muslim world during their era. Jamal al-Din al-Afghani was primarily an advocate of Islamic unity against colonialism, but he also supported national liberation movements. He helped ignite revolutionary sentiments against the tyranny of Khedive Ismail in Egypt and was considered the "spiritual father of Ahmad ʿUrabi's revolution" in 1881. Afghani aimed to revive a sense of national dignity in the face of foreign domination (nationalist ideas being newly imported from the West and previously unknown in Islamic thought), believing that Islam could unite the oppressed peoples under a common cause. However, his *Pan-Islamic* project—i.e., the unity of Muslims under one banner—took on a practical political form rather than a purely spiritual one. He attempted to foster rapprochement between the Ottoman Sultan and the Shah

of Iran, for instance, to form an Islamic front against the West. He even promoted the idea of establishing secret societies to resist colonial powers.

Ironically, Afghani himself joined a Masonic lodge—specifically, the "Star of the East" lodge in Cairo—and pledged there, alongside Egypt's crown prince (Khedive Tawfiq), to work toward constitutionalism and consultative governance. This step, however, would later draw severe criticism (as will be elaborated in the next section).

Muhammad ʿAbduh, for his part, was more explicit in adopting aspects of nationalist and liberal thought within an Islamic framework. As an Azhar-trained Egyptian, he took pride in his national identity and believed that *"reforming Islam (modeled after Christian Protestant reform) is the key to the revival and liberation of the Egyptian and Arab nations from colonialism."* In other words, religious renewal was placed at the service of the nationalist project. At the same time, ʿAbduh did not object to drawing on European liberal ideas in governance and administration. While he did not openly call for secularism in the Western sense of completely separating religion from the state, he did distinguish between the spiritual role of religion and the management of the modern state. For instance, he called for educational reform by separating religious (Azhar-based) education from modern civil education, aiming to modernize Egypt's general knowledge base. He also supported the creation of consultative councils and a constitutional system. Lord Cromer (the British High Commissioner), in fact, capitalized on ʿAbduh's thought to modernize Egypt's sharīʿa judiciary according to a modern framework【aljazeera.net】. ʿAbduh collaborated with the British occupation in reforming al-Azhar and other Islamic institutions under Cromer's moderate vision【aljazeera.net】. While the stated goal was to develop the legal and educational system, Britain sought to integrate religious scholars into the modern state apparatus and cultivate their loyalty through exposure to liberal legal norms detached from Islamic sciences【aljazeera.net】. Some contemporaries of ʿAbduh justified this cooperation by arguing that he sought reform from within the colonial system. Others, however, considered it capitulation to an occupying power at the expense of scholarly independence【aljazeera.net】.

Moreover, many scholars view Muhammad ʿAbduh as the father of "liberal Islam." He established the idea that Islam is a flexible religion suitable for all times and places—based on its fixed principles and adaptable applications. This claim was the beginning of religious distortion. Sharīʿa is not so flexible that it can accommodate every ideology, even those that oppose it. Rather, it is expansive in that it can address new realities using the established methodology of applying foundational principles to contemporary cases. It is not "flexible" in either its fundamentals or its branches.

The issue lies in the standards and controls of this adaptation. ʿAbduh and his followers emphasized change and progress so heavily that even the so-called "constants" were lost in the swirl of change—let alone what they classified as variables! This flawed mentality toward sharīʿa persisted, with figures like Rachid Ghannouchi and others promoting the division of Islam into "constants and variables," as though they received revelation determining what belongs to each category. They thereby positioned reason as the actual legislator, claiming that Islam either left these areas without guidance or allowed reason to legislate them independently.

Consequently, ʿAbduh paved the way for an indirect separation between religion and state: sharīʿa governs morals and general principles, while specific laws may be altered to suit changing temporal interests. From this emerged successors who went even further in this direction—such as ʿAli ʿAbd al-Rāziq—and many contemporary trends that now dominate the Islamic world, detached from sharīʿa, its foundations, and its methodologies.

Rashīd Riḍā himself went through different phases in his position toward nationalism and liberalism. Early on, under ʿAbduh's influence, he attempted to reconcile Western civilization with Islam. He even supported the Young Turks movement, thinking it would bring reform. But after World War I, he defended the idea of the Islamic caliphate and condemned Turkish nationalism for abolishing it. Later, he leaned toward an Arab-Islamic nationalist project—envisioning a caliphate centered around the Arabs after the fall of the Ottoman state. Despite his dream of Islamic unity, he practically supported the 1916 Arab Revolt against the Turks, hoping for Arab independence—a clearly nationalist stance.

Riḍā also criticized atheistic communism and socialism, but he did not object to what later came to be known as "Islamic socialism," which was proposed as an alternative, including redistributive measures like zakāt and Islamic social justice【aljazeera.net】. Indeed, among his followers and their intellectual heirs in Egypt and Syria, some began adapting certain socialist principles within an Islamic framework—like Muṣṭafā al-Sibāʿī's writings on "Islamic Socialism."

In short, the reformists laid the foundation for the idea that Islam can be adapted to accommodate all modern systems: it could absorb nationalism (love of country and anti-colonialism), accept liberalism (civil and constitutional liberties),

and even internalize the social justice of socialism without embracing its atheism. They considered this adaptation necessary to prevent Muslims from lagging behind in progress【aljazeera.net】.

We should also note their position on the issue of women in this modernization context. ʿAbduh supported women's liberation—albeit relatively—and their education. His student Qāsim Amīn famously advocated for the removal of the veil in his book *The Liberation of Women* (1899)【aljazeera.net】. Riḍā wrote a biography of Amīn in *al-Manār*, indicating serious interest in his ideas. While ʿAbduh himself did not call for complete unveiling, his intellectual campaign paved the way for louder voices advocating for greater women's participation in public life—all under the banner of "renaissance" and keeping pace with advanced societies.

To summarize: The rationalist reformers adopted a method of accommodating modern ideologies and movements as much as possible. They sought to give nationalism, liberalism, and other ideas an Islamic veneer, believing this would demonstrate Islam's capacity to evolve and stay relevant. They succeeded, to a large extent, in shaping a class of "enlightened Muslim intellectuals" who embraced Western modernity under a superficial Islamic framework. However, many critics argue that this method gradually stripped Islamic identity of its distinctiveness, reducing religion for some generations to flexible spiritual slogans that could conform to any ideology—after it had once been a comprehensive worldview with immutable foundations.

Afghani and ʿAbduh's Relationship with Freemasonry and the Pan-Islamic Project

A wide controversy has surrounded the relationship of Jamal al-Din al-Afghani and Muhammad ʿAbduh with Freemasonry. It is historically documented that al-Afghani joined a Masonic lodge in Egypt around 1876, and even established the "Star of the East" lodge, which was aligned with French Masonic ideals【aljazeera.net】.Muhammad ʿAbduh also entered Freemasonry under the guidance of his teacher, al-Afghani【aljazeera.net】.

Sources indicate that al-Afghani invited Khedive Tawfiq to join the lodge with him in order to promote the idea of consultative governance (shūrā), and they pledged within the lodge to work towards a constitutional system to limit the despotism of Khedive Ismail. Regardless of intentions, this affiliation with Freemasonry is seen by most scholars as a grave error. It is difficult to imagine that individuals of their caliber would be unaware of the Masonic lodges' deep associations with colonial powers and their opposition to the Ottoman Caliphate【aljazeera.net】.

Contemporaries such as Shaykh Yūsuf al-Nabahānī, Dr. Muhammad Muhammad Ḥusayn, and others severely criticized them for this. Dr. Ghāzī al-Tūbah, in his study of Muhammad ʿAbduh, considered this Masonic affiliation one of the three great sins of the imam—alongside his cooperation with the colonial authorities and his excessive rational reinterpretation of matters of the unseen【aljazeera.net】.

As for the **Pan-Islamic project** (*al-Jāmiʿah al-Islāmiyyah*), originally championed by al-Afghani and later embraced by Sultan ʿAbd al-Ḥamīd II, it was conceived as a call to unite Muslims under a single political and religious banner to resist colonial fragmentation. Al-Afghani traveled extensively, calling Muslims—both Sunnis and Shiʿis—to forget their differences and stand as one. His journal *al-ʿUrwah al-Wuthqā* served as a platform to spread awareness of Islamic unity and resistance to occupation.

Theoretically, this Islamic unity was framed as a religious bond—reviving the idea of a single *ummah* in which "there is no superiority for an Arab over a non-Arab except through piety." But in practice, reformers also employed this project within a nationalist political context. For example, al-Afghani allied with Egyptian nationalists against the Khedive and later cooperated with the Ottoman Sultan—despite earlier criticisms—when he believed Muslim interests demanded it.

After the fall of the Ottoman Caliphate, Rashīd Riḍā sought to reframe the Pan-Islamic idea as a political union led by the Arabs. He proposed, for instance, that the King of Egypt be made Caliph or that the Arab countries unite into a single state. However, this vision ultimately failed due to the reality of political fragmentation and colonial occupation.

The most concerning aspect of this trajectory was al-Afghani's call for the **multiplicity of governments** in the Muslim world instead of the establishment of a single Islamic state uniting Muslims. How could he advocate dividing Muslims into mini-states while they were still under a unified Islamic Caliphate? This idea was premature and harmonized with British colonial plans that sought to dismantle and fragment the Islamic state.

One critical point worth reflecting upon is that the *Pan-Islamic bond* gradually lost its spiritual dimension and became more of a **political dream**. It shifted from being a bond of religious allegiance to the Caliphate into a kind of political solidarity among nations and peoples bound only by common interest against external enemies. This transformation was a natural result of the reformers' emphasis on civil and national revival as the priority. For them, religion became more of a **civilizational motivator** than a transcendent allegiance that transcended ethnicity and geography.

Furthermore, the behavior of some of al-Afghani's and ʿAbduh's disciples contributed to this shift. For instance, **Saʿd Zaghlūl**, a student of ʿAbduh, led the 1919 nationalist revolution in Egypt, which had a liberal, not Islamic, character. He famously raised the slogan: *"Religion is for God, and the nation is for all."* Likewise, **Aḥmad Luṭfī al-Sayyid** adopted a Pharaonic Egyptian nationalism and called for severing Egypt's ties with its Islamic surroundings. These figures were among the intellectual elite influenced by ʿAbduh's ideas at one point, but ultimately veered toward constructing national identities based on the European model【aljazeera.net】.

Thus, it can be said that the traditional concept of the *Pan-Islamic Union*—as a religious allegiance under the Caliphate—was gradually emptied of its substance. It was replaced by a vision closer to an *Organization of Islamic Cooperation* or a political conference of states, much like what we see today. Reformers may not have consciously intended this result, but it emerged inevitably from their accommodation of the modern nation-state paradigm.

Professor Ziyād Salāmah, in his book *Shaykh Ḥasan al-Bannā: An Intellectual Biography*, writes:

"Afghani began his campaign by denouncing ethnic fanaticism and calling for the freedom of Muslims (cf. Muhammad Muhammad Ḥusayn, *al-Ittijāhāt al-Waṭaniyyah fi-l-Adab al-ʿArabī al-Ḥadīth*, vol. 1, p. 21). However, his lack of clarity regarding the concept of the Muslim *ummah*—a single nation where no Arab is superior to a non-Arab except through piety—led him to describe every ruler of Egypt throughout history (including Arab and Muslim ones) as despotic. He equated the Islamic presence in Egypt with that of the Romans, Greeks, and French, saying to Egyptians:

'If there ran in your veins blood with living corpuscles, if there were nerves in your heads sensitive enough to stir honor and zeal, you would not have accepted this humiliation and degradation. You would not have remained silent in this abjection and sloth. You sat on burning coals laughing while herdsmen took turns lording over you—Greeks and Romans, Arabs and Kurds, Mamluks, then the French and the Mamluks of the ʿAlawī dynasty—all of them slicing through your skins with their greed and crushing your bones with the tools of their tyranny…'

In conclusion: The modern rationalist school formed controversial relationships and alliances—with Freemasonry and with modern political projects. Their declared goal was to serve Islam and the Muslims through these means, but many saw this as profoundly dangerous. Freemasonry and similar suspicious movements used these figures for their own ends and then discarded them. Similarly, nationalism and liberalism, when taken to their limits, produced secularist movements that pushed religion out of public life.

This is why Islamic critics such as Muhammad Muhammad Ḥusayn, Abū al-Ḥasan al-Nadwī, and ʿAbbās al-ʿAqqād consider this era to be a **turning point**—a moment when Western thought infiltrated the Muslim world from within, through figures who raised the banner of religious reform but were—knowingly or unknowingly—dismantling the old foundations to make way for a new structure aligned with the Western model.

The Influence on the Egyptian Intellectual Elite and Modern Islamic Movements

The school of Afghani and ʿAbduh had a profound impact on the elite intellectual class in Egypt in the early twentieth century—and subsequently on the entirety of modern Islamic thought. A number of prominent figures from that era were direct disciples of, or were strongly influenced by, Muhammad ʿAbduh's ideas. It is enough to mention names like **Saʿd Zaghlūl** (leader of the 1919 Revolution and later Prime Minister of Egypt), **Aḥmad Luṭfī al-Sayyid** (father of Egyptian liberalism and pioneer of nationalism), **Qāsim Amīn** (advocate of women's emancipation), **ʿAbd al-Raḥmān al-Kawākibī** (renaissance thinker and author of *The Nature of Despotism*), and even the poet **Aḥmad Shawqī**, who reflected some of these ideas in aspects of his thought【archive.org】【aljazeera.net】.

Beyond Egypt, Afghani's influence extended across the broader Islamic East. In the Indian subcontinent, it reached **Muhammad Iqbāl**, the celebrated *Poet of Islam* and a student of Afghani's legacy. In the Levant, his ideas shaped many, including **Shaykh Ṭāhā al-Fayyāḍ**, the Mufti of Syria, among others.

Dr. Ghāzī al-Tūbah notes that Muhammad ʿAbduh left a distinct imprint on the formation of the Egyptian intellectual elite that emerged after him【aljazeera.net】. He lists individuals such as Qāsim Amīn, Saʿd Zaghlūl, Aḥmad Luṭfī al-Sayyid, Ṭāhā Ḥusayn, and ʿAbbās Maḥmūd al-ʿAqqād【aljazeera.net】. Some of them were direct students of ʿAbduh (such as Saʿd and Luṭfī), while others were influenced indirectly through their readings or intermediaries (such as Ṭāhā Ḥusayn and al-ʿAqqād).

Each continued the modernist project in his respective domain:

- **Saʿd Zaghlūl** led a liberal movement for Egypt's political and social liberation. Although trained at al-Azhar, he adopted a secular civil approach that effectively separated religion from politics.
- **Aḥmad Luṭfī al-Sayyid** laid the groundwork for cultural secularism and territorial nationalism in Egypt.

- **Ṭāhā Ḥusayn** developed a style of historical critique that led him to challenge parts of the Qur'anic narrative—such as the story of Abraham and Ishmael (peace be upon them)—based on a rigid rationalism influenced by Orientalist methodologies.
- Even **al-ʿAqqād**, though maintaining some level of religiosity, presented a modernist rationalist Islamic thought that departed significantly from many traditional fundamentals.

We may say that the rationalist reformist trend branched, after Rashīd Riḍā, into two main wings:

1. A **relatively conservative moderate** wing represented by Azhar-trained figures who combined authenticity with legal facilitation (*taysīr*). An example is **Shaykh Maḥmūd Shaltūt**, who followed the *Manār* approach but with more caution, allowing some modern financial transactions while safeguarding essential Islamic rulings.
2. A **radical liberal** wing composed of writers and thinkers who pushed ʿAbduh's ideas to their extreme under Western intellectual influences.

From this second wing emerged figures such as:

- **ʿAlī ʿAbd al-Rāziq**, who in his 1925 book *Islam and the Foundations of Governance* denied that Islam mandates a caliphate, claiming it was merely a historical experiment that could be dispensed with. This was a complete separation of religion from politics, grounded in Western rationalist logic.
- Also, as previously mentioned, **Ṭāhā Ḥusayn**, in his 1926 book *On Pre-Islamic Poetry*, cast doubt on certain historical Qur'anic accounts under the guise of scientific methodology, triggering outrage within al-Azhar at the time.

These individuals represented a more **secular-modernist orientation** than a purely Islamic rationalism, though they clearly emerged from the intellectual framework established by ʿAbduh—namely, the call to *free rational interpretation* of the texts.

Outside of Egypt, reformist movements across the Muslim world were likewise influenced by this thought.

- In **India**, for instance, **Sir Sayyid Ahmad Khan** (1817–1898) was influenced by Afghani and ʿAbduh. He called for a similar re-interpretation of Islamic law to align with British civilization. He went so far as to deny miracles and supernatural interpretations—paralleling ʿAbduh's own approaches in many respects. His ideas spread through **Aligarh University**.
- In **Turkey**, some early pioneers of the Tanzimat reform movement and later the Young Turks adopted the same rationalist inclination, which eventually culminated in the establishment of **Atatürk's secular state**—a radical embodiment of this thought.

Thus, Egypt was not the only stage on which this intellectual trend played out; rather, the *contagion*—if the term may be used—spread across the Islamic world.

Contemporary Currents Emanating from the Rationalist Reformist Tradition

In recent decades, new currents have emerged that, while appearing novel on the surface, are in essence an extension of the rationalist reformist methodology. Among the most prominent of these currents are: the **Modern Maqāṣid Movement**, **Facilitatory Jurisprudence** (including minority fiqh and fiqh of balancing interests), and what has come to be known as **Liberal Islam** in academic circles.

• The Modern Maqāṣid Movement

This trend is led by scholars and thinkers such as Dr. **Yūsuf al-Qaraḍāwī**, Dr. **Aḥmad al-Raysūnī**, and others. They place heavy emphasis on applying the higher objectives (*maqāṣid*) of the Sharīʿah in all forms of legal reasoning, under the banner of showcasing Islam's mercy and flexibility. However, some of their fatwas stirred considerable controversy for overstepping what conservative scholars regard as consensus (ijmāʿ).

For instance, **al-Qaraḍāwī** issued fatwas permitting bank interest in cases of necessity in Western countries, and even allowing work in interest-based banks, stating: *"This has become a widespread affliction. If one is unable to avoid it, then there is no harm in accepting such a job..."* He expanded the principle of necessity on the pretext of the obligation to work, stating: *"Shaykh Yūsuf al-Qaraḍāwī said that one may work in such institutions to gain skills and experience not available elsewhere, with the goal of eventually transitioning to Islamic institutions or entrepreneurship where such expertise may be applied."* (*IslamOnline: Fatwa on Working in Interest-Based Banks*). He also argued: *"If we were to prohibit every Muslim from working in banks, the result would be that non-Muslims—especially Jews—would dominate the banking sector. This would pose great harm to Islam and Muslims. Furthermore, not all banking work is interest-based. Much of it is permissible, such as brokerage and deposits. The impermissible parts are fewer, so it is acceptable to tolerate them while striving to change the financial system to one more pleasing to one's religion and conscience. The Prophet ﷺ said, 'Actions are by intentions.'"*

"Islam does not reject gradualism in addressing such issues... proceeding with conviction and will." All of these positions are justified by appealing to *maṣlaḥah* (interest) and *rafʿ al-ḥaraj* (removal of hardship). Although al-Qaraḍāwī was generally diligent about citing evidences and did not explicitly state that interests override texts, he sometimes engaged in strained reinterpretations of texts to fit what he perceived as the public interest—thus continuing the path of ʿAbduh in reinterpreting texts according to the requirements of the age, albeit in a more restrained manner.

Aḥmad al-Raysūnī also significantly expanded the role of maqāṣid to the extent that some critics called him the "Ṭūfī of our time" (a reference to the medieval scholar Nāṣir al-Dīn al-Ṭūfī and his theory of unrestricted interest). The concern here is that some advocates of this approach have crafted what amounts to a "new version" of the Sharīʿah—focused almost exclusively on general objectives while sidelining specific rulings. They began to see any ruling whose maqāṣid-based rationale is not immediately apparent as subject to change. This simply recycles the same logic of the original rationalist school: "The ruling revolves around its benefit"—except now that "benefit" is defined by their own reasoning, not by revealed texts.

• Fiqh for Muslim Minorities

This legal approach emerged in the 1990s to address the dilemmas facing Muslims living in the West. Two broad trends developed within it:

1. A **restrained trend**, which respected the principle of necessity and encouraged Muslims to adhere to the Sharīʿah to the extent of their ability.
2. A **more permissive trend**, adopted by individuals without sufficient scholarly qualifications, who issued sweeping concessions under the pretext of "real-world necessity."

Examples include fatwas permitting **mortgages based on interest in Europe** on the grounds of need, or legitimizing behaviors aimed at promoting assimilation. Some even went as far as discussing the **permissibility of a Muslim woman marrying a non-Muslim man** under the pressure of Western realities—an opinion that flagrantly violates both revealed text and scholarly consensus.

This second trend is essentially a modern replica of ʿAbduh's methodology, albeit under different circumstances. They inverted the legal method—making the *outcome* precede the *evidence*, and constructing an ad hoc jurisprudence to justify leniency in clear-cut prohibitions such as usury and family law—all under the pressure of minority status.

It has also become evident that **some Western-based fatwa institutions promoting this approach**—namely the fiqh of minorities and the fiqh of balancing interests—**received conditional funding** from parties intent on shaping a *domesticated* version of Islam compatible with Western values. One researcher stated:

"'Fiqh of Balancing' and 'Fiqh of Minorities' in the Western arena is not a free scholarly effort as marketed, but a project funded by Western and Arab actors to reshape Islam into something compliant with non-Islamic priorities... We are facing a phenomenon of 'fatwa-for-sale,' where financial incentives are being used to reengineer the very structure of Islamic rulings. Without a doubt, this poses one of the gravest threats to the Islamic legal tradition in our time."

This echoes what Dr. **Muhammad Muhammad Ḥusayn** diagnosed over half a century ago when he wrote: *"The West has devised traps for these so-called reformers to distort Islam from within its own environment."*

• Modernist Islamists (New Liberal Islam)

At the beginning of the 21st century, a group of writers and intellectuals emerged who were trained under the guidance of American institutions seeking to fund "moderate Islamic networks." These individuals adopted Western modernist values in full and sought to reinterpret Islam accordingly.

Among them are **Muhammad Shaḥrūr** in the Levant, **Ḥasan Ḥanafī** in Egypt, and **ʿAbd al-Majīd al-Sharfī** in Tunisia, among others. While they do not trace their intellectual roots directly to ʿAbduh or Rashīd Riḍā, they are heavily influenced by Western philosophical thought. However, a close analysis of their ideas reveals a clear continuity with the rationalist reformist mindset: namely, the re-reading of sacred texts to align with modern values (democracy, secularism, human rights in the Western sense).

Examples include:

- Denying the classical division of the world into **Dār al-Islām** and **Dār al-Kufr**.
- Reinterpreting **jihād** as purely defensive.
- Implicitly or explicitly accepting the **separation of religion and state**, claiming "Islam is a religion, not a state."
- Calling for the **abolition of fixed punishments (ḥudūd)**, claiming they are unsuitable for the modern era.

All of this echoes the proposals of **ʿAlī ʿAbd al-Rāziq** and **Ṭāhā Ḥusayn**, but now couched in more academic language. These thinkers are, without doubt, ideological heirs of the rationalist school—even if they do not openly acknowledge the lineage—because the core principle remains the same: subjecting divine revelation to the standards of modernity.

It becomes evident from all of the above that the intellectual legacy of the rationalist reformist school continues to shape contemporary thought in diverse forms. Despite periods of decline—such as the mid-twentieth century—the school experienced a powerful resurgence after the 1980s. It remains deeply entrenched in thought patterns promoted and funded by the West, with open media platforms provided to propagate it as a means of undermining Islam "from within."

The gravest consequence, as previously illustrated, is the **undermining of certainty in revelation as the supreme authority**, and the replacement of divine standards with modern secular rationalism and Western legal systems. This precise point has been the central focus of intense critique by leading scholars who oppose the rationalist school.

Critique of the Rationalist School and Its Concepts in the Writings of Ḥusayn, al-Jundī, al-Nadwī, and Others

The modern rationalist school has been the subject of critique from its earliest days by Islamic scholars and literary figures who recognized its threat. Among the most profound critics was **Dr. Muhammad Muhammad Ḥusayn (1911–1977)**, a leading researcher in modern Islamic thought. His works provide a deep analysis of what he called the **"Western ideological invasion"** of the Muslim world from within.

In his books *"al-Ittijāhāt al-Waṭaniyyah fī al-Adab al-ʿArabī al-Ḥadīth"* ("Nationalist Trends in Modern Arabic Literature") and *"Ḥuṣūnuna Muhaddadah min Dākhilihā"* ("Our Fortresses Are Threatened from Within"), he uncovered the roots of Westernization and intellectual transformation. He spoke in detail about the roles of **Jamāl al-Dīn al-Afghānī**, **Muhammad ʿAbduh**, and their school in enabling this process.

Dr. Ḥusayn argued that these reformers—despite the sincerity of some—fell into the intellectual traps set by the West. Attempting to rebut accusations of stagnation levied by Orientalists, they ended up veering to the opposite extreme. He wrote:

"The well-intentioned among them stretch Islamic values to their furthest limits toward alignment with Western values. In doing so, they fall into the very snares the West designed for such figures. In seeking to deny the charge of rigidity—one attributed to Sharīʿah by Westerners—they go so far in emphasizing its flexibility that they reach a point of dilution, erasing Islamic identity and foundational principles. Thus, religion becomes pliable enough to be annexed to any system or subjugated to any desire. The result is that the religion loses its corrective function; instead of reforming life with the texts of Sharīʿah, they manipulate those texts to justify the distortion of contemporary life."

This scathing critique encapsulates the principal flaw in the rationalist school: by chasing modern Western concepts, it stripped Sharīʿah of its integrity and reverence. For their more extreme followers, the Sharīʿah became nothing more than a repository of reinterpretable texts, molded to fit the contingencies of the moment. Revelation was no longer "sovereign," but instead made "subordinate" to current realities.

Dr. Ḥusayn also criticized the **entanglement of these figures with colonial structures**. In *"al-Ittijāhāt al-Waṭaniyyah"*, he discussed how the British supported ʿAbduh's school to reshape the traditional Islamic mindset. For example, he cited Lord Cromer, the British administrator of Egypt, who expressed in official reports his **support for ʿAbduh's educational program**, which aimed to collaborate with Europeans and introduce their civilization into the region. Cromer even noted that **appointing Saʿd Zaghlūl** as Minister of Education in 1906 was part of this policy.

Zaghlūl, a close disciple of ʿAbduh, played a pivotal role in secularizing Egypt's education system and laying the foundations for Cairo University—purposely detached from al-Azhar. Dr. Ḥusayn decried the cultural subservience of certain elites to British interests and their infatuation with Western civilization, despite its deep-seated hostility toward Islamic belief. He drew a clear line from ʿAbduh's ideas to later literary figures who adopted a hostile stance toward Arab-Islamic heritage in the name of progress.

For instance, the **advocacy of "folk literature" in colloquial dialects** and the push to separate literary expression from classical Arabic emerged from within this reformist school—heavily influenced by Orientalist agendas. Similarly, Westernized poetic and literary tendencies—such as those seen in the Apollo group and the Dīwān school—were all shaped by the **liberal thought planted by ʿAbduh's movement in early 20th-century Egypt**.

Anwar al-Jundī (1917–2002), another influential thinker in modern Islamic discourse, dedicated dozens of books and articles to refuting the claims of Westernized reformists. In *"Aʿlām wa Mawāqif"* ("Figures and Stances") and other

works, he dissected the biographies of **al-Afghānī** and ʿ**Abduh**, revealing the roles of **Freemasonry and Orientalism** in undermining the Ottoman Caliphate and promoting narrow nationalist ideologies.

He implied that colonialism could never have succeeded without the cooperation—intentional or not—of certain Eastern intellectuals. Al-Jundī viewed ʿAbduh as the "teacher" of an entire generation of writers who gradually distanced themselves from true Islam. He named **Shiblī Shumayyil**, **Farah Anṭūn**, **Salāmah Mūsā**, and **Ṭāhā Ḥusayn** as members of the Arab rationalist school. These figures, in al-Jundī's estimation, were either overt atheists or extreme secularists.

Although ʿAbduh himself remained committed to core Islamic beliefs, his **unregulated opening of the door to rational interpretation** emboldened others to go beyond what he would have accepted. This, according to al-Jundī, was the **real danger**.

Similarly, **Abū al-Ḥasan al-Nadwī (1913–1999)** of India adopted a firm stance. In his celebrated book *"Mādhā Khasira al-ʿĀlam bi Inḥiṭāṭ al-Muslimīn?"* ("What Did the World Lose by the Decline of the Muslims?"), he criticized the approach of certain so-called revivalists who imitated the West.

He mentioned the modernist trend in Egypt and India, referencing figures like **Sayyid Aḥmad Khān** (the Indian counterpart to ʿAbduh), noting how his followers became enamored with the West and led reforms down perilous paths. Nadwī emphasized the need to distinguish between **commendable change** and **blameworthy innovation**, and argued that many reforms promoted by these so-called reformers were **in fact destructive to the spiritual core of Islam**, even if they appeared progressive on the surface.

In this, he echoed Dr. Ḥusayn's critique. Nadwī also praised the efforts of **God-fearing scholars** who resisted these trends and revived sincere faith without excess or neglect—such as **Shaykh Maḥmūd Ḥasan** and **Ḥusayn Aḥmad al-Madanī** in India, who led liberation movements without compromising their religious principles; or ʿ**Abd al-Ḥamīd ibn Bādīs** and **al-Bashīr al-Ibrāhīmī** in Algeria, who resisted colonialism through cultural revival while firmly upholding doctrinal orthodoxy.

A clear contrast is drawn between a **conservative reformist path**—represented by these scholars—and the **rationalist reformism** of al-Afghānī and ʿAbduh in the Arab East. Nadwī favored the former, as it **preserved the integrity of revelation** while wisely engaging in renewal.

Finally, **Sayyid Quṭb (1906–1966)** offered his own critique of the rationalist current—especially significant given his own journey from liberalism to Islamic revival. In his famous work *"Maʿālim fī al-Ṭarīq"* ("Milestones"), Quṭb diagnosed a **"psychological defeat"** suffered by some Muslim intellectuals in the face of Western civilization. This defeat drove them to **contort Islam to conform to materialist modernity**, which he regarded as deeply dangerous.

Though he did not name individuals, Quṭb clearly targeted the methodology of ʿAbduh and his ideological successors. Similarly, **Mālek Bennabi (1905–1973)**—the prominent Algerian thinker—stressed the importance of **intellectual independence** for Muslims. He warned against dissolving into Western paradigms, a critique that implicitly applied to the rationalist school's effort to **"refashion Islam"** to match European criteria.

The Transformation of Islamic Thought Due to the Rationalist School

There is no doubt that the spread of ideas from rationalist reformers has led to a profound shift in the mindset of many Muslims regarding scriptural texts and divine revelation. Whereas traditional Islamic thought viewed the Sharīʿah text—be it Qur'ān or authentic Sunnah—as the final, authoritative word, a new generation emerged that subjected these texts to the tribunal of reason and the benchmarks of "progress."

Many contemporary intellectuals—even outwardly religious ones—became hesitant to accept certain definitive legal rulings if they believed that Western thought found them objectionable. Instead of taking pride in their faith and presenting it to the world as an alternative, some Muslims began to feel that they needed to justify their religion to Western civilization and "revise" it to align with its values.

This **defeatist mentality** is precisely what **Dr. Muhammad Muhammad Ḥusayn** warned against when he said that these reformers had "stretched the flexibility of the Sharīʿah to the point of dissolution... turning it into a mere appendage of any system." Indeed, a significant segment of the Muslim community underwent a shift in their conception of legal authority: once rooted firmly in divine revelation, it became, for some, a **hybrid reference point** consisting of contemporary reality, utilitarian reasoning, global liberal values, and Western liberalism—accepting from religion only what conformed to these standards.

In this sense, the **mindset became predominantly utilitarian and Western in orientation**, as the research question of this chapter suggests.

This **pragmatic-utilitarian thinking** that infiltrated the contemporary Muslim mind led many to evaluate legal rulings solely in terms of direct material benefits. If a ruling did not yield an immediate advantage or failed to align with societal desires, it would be criticized and subjected to efforts for mitigation or suspension.

This is precisely the path charted by the rationalist school from its inception: evaluating rulings through a **limited human rational lens**, rather than submitting to the fixed wisdom of God and seeking the rationale within the framework of **faith in the unseen**. Thus, slogans such as:

- "Legal rulings change with the times,"
- "Islam is a religion of evolution,"
- "Wherever there is benefit, there is Sharīʿah,"

...were employed as **foundational premises** used to **reinterpret or practically nullify the Sharīʿah**, permitting prohibitions under the guise of maqāṣid (objectives), or claiming that certain rulings were only appropriate for their historical context.

For the extremists among them, this "new jurisprudence" became nothing more than a system for **finding reinterpretations** for any text that contradicted Western values, or suspending such texts in the name of the higher objectives (maqāṣid), or asserting that they were time-bound. Unfortunately, this mindset trickled down from intellectual elites to the **educated general public** through the media and educational systems.

It is now no longer surprising to hear an ordinary Muslim argue that **usury (ribā)** is no longer forbidden because it has become an "economic necessity today"—unwittingly relying on **Muhammad ʿAbduh's old fatwā justifying bank interest**. Or to hear someone else claim that **ḥudūd punishments**, like cutting off the hand of a thief, are outdated and no longer suitable under "modern human rights."

These views did not arise in a vacuum. They are the result of **decades of propagation** of the writings and ideological leanings of the rationalist school in its various forms.

In this regard, **Abū al-Ḥasan al-Nadwī** rightly observed:

"Religion does not keep pace with every form of change; rather, religion distinguishes between healthy change and unhealthy change." [al-maktaba.org]

This fundamental distinction is precisely what **those reformists failed to grasp**.

Concluding Critical Reflection

The price has been steep. The **rationalist utilitarian school**, through its excessive influence from the Western model, **diluted core Islamic tenets**, introduced alien Western concepts into the understanding of Islam, and—most dangerously—**altered the thought process** of a significant number of Muslims and even scholars. It created a state of **methodological and epistemic chaos**, detached from foundational principles and rigorous discipline.

Indeed, *some of our fortresses were dismantled from within*, just as Dr. Muhammad Ḥusayn titled his book. The Muslim ummah now faces a **new and more insidious challenge** than that of foreign colonization: the challenge of **invasive concepts** stealthily entering through its own members, cloaked in the garb of ijtihād and tajdīd (renewal).

New generations have emerged—**enchanted by the West**—to the extent of mimicking its methodology in dealing with religion, despite the fact that this Western methodology **originated from a specific historical conflict** between the Church and science. That conflict has no equivalent in Islamic history and need not apply to us.

In conclusion, we can state that **the locus of authority in Islamic legal thought shifted—among those influenced by the rationalist school without discernment—from infallible revelation to fallible human reason**. Personal desire began to infiltrate the discourse under the names of "public interest," "reinterpretation," and "development," eventually overriding the statements of **"God Almighty said" and "the Messenger ﷺ said."**

This is a **reversal of the divine-human hierarchy** and a **loss of spiritual compass**.

Hence, the writings of critics like **Muhammad Muhammad Ḥusayn**, **Anwar al-Jundī**, **al-Nadwī**, and others serve as **a wake-up call to the ummah**, warning it not to be dazzled by the glitter of modernity at the expense of its religion's core. They call for **renewal upon the Prophetic methodology—not upon the Western one**.

Finally, **historical experience itself has vindicated many of these scholars' critiques**. We have witnessed firsthand the consequences of unbridled rationalism:

- A growing disconnect between Muslim societies and their Sharīʿah,

- A sweeping fascination with Western civilization, even in its vices,
- A waning reverence for traditional scholars in the face of the clamorous rhetoric of "modernist thinkers."

By contrast, the **balanced return to the Qur'an and Sunnah**, championed by many Islamic movements of the past and present, has brought about a **blessed awakening** that has partially restored balance.

The **struggle continues** between a current that draws inspiration from the West and another that draws inspiration from revelation.

It is hoped that this **comprehensive analytical report** will help illuminate the roots of this intellectual conflict, its early pioneers, and the need for their **methodical critique**. The modern Muslim must be able to **discern between substance and pretense** in what is promoted as "renewal" or "ijtihād," in order to embrace authentic revival without **undermining the foundations of his identity and faith**.

We ask Allah to guide us to sound judgment and to protect our ummah from intellectual subversion.

Indeed, He is the All-Hearing, the Responsive.

References and Sources

This analysis has drawn from a wide range of **primary sources and modern studies**, most notably the writings of **Muhammad Muhammad Ḥusayn**, **Anwar al-Jundī**, and **Abū al-Ḥasan al-Nadwī** [al-maktaba.org], alongside works by contemporary researchers. It also includes **historical documentation** regarding **al-Afghānī and ʿAbduh**, such as **Rashīd Riḍā's memoirs** and **contemporary archival reports** [archive.org]. All quotations are duly cited in their respective locations to meet scholarly standards.

We ask Allah that we have succeeded in presenting and critiquing this topic accurately. And Allah knows best.

Conclusion and Recommendations

Following this extensive journey through the study titled *"The Reference of Legislation Between Reason and Revelation in Islamic Thought"*, we arrive at a conclusion that affirms the most critical findings and outcomes of this research. We ask Allah to have guided us to articulate the truth, supported by evidence, fulfilling the purpose of establishing a clear and compelling argument, as requested. The main conclusions can be summarized as follows:

- **First:** Legislation is the sole and exclusive right of Allah Almighty—this is a foundational tenet of belief and monotheism. For Allah, as the Creator who knows His creation best, alone possesses full knowledge of what benefits or harms them. Therefore, He alone has the right to set laws and regulations for them. This was substantiated by clear Qur'anic texts such as: *"Legislation is for none but Allah"* (Yusuf: 40) and *"Or do they have partners who have ordained for them a religion to which Allah has not consented?"* (Ash-Shura: 21). This rhetorical question indicates that no one may legislate except by Allah's permission. Hence, any law or system that contradicts what Allah has revealed is invalid, regardless of the perceived benefits its advocates may claim. A ruling is only considered Islamic if it is derived from the Qur'an, the Sunnah, or what legitimately stems from them such as scholarly consensus or analogical reasoning.
- **Second:** The function of reason in legislation is understanding and implementation—not origination or invention. We have demonstrated the scholarly consensus that the intellect is a tool to comprehend the revealed texts and extract rulings from them, not an independent source for legislation. No matter how brilliant, human reason remains relatively limited, bound by time and place, and susceptible to error and desire. It cannot be entrusted with comprehensive legislation. Reason is undoubtedly necessary for deriving rulings and applying them to real-life situations—this is the domain of proper ijtihad (juridical reasoning). But such reasoning must always remain within the framework of revelation. If a text exists, it must be followed and submitted to; if there is no text, the jurist seeks analogies or general principles to apply. In all cases, the intellect follows the evidence, not the other way around. We have cited strong statements from leading imams condemning those who prioritize reason over revelation in religious matters. Therefore, the claim that *"reason can be a source of legislation"* is entirely false in Islamic thought.
- **Third:** Human reason is inherently incapable of fully grasping comprehensive, ultimate benefits. Through philosophical analysis and real-world examples, we demonstrated that what humans deem beneficial may in fact be harmful, and vice versa. We enumerated several areas of cognitive deficiency: temporal (lack of knowledge of the future), spatial (cultural biases), psychological (influence of desires or upbringing), and general ignorance of many realities. Revelation came precisely to fill these gaps. Thus, it is a grave error for someone to subject the complete, perfect divine law to the judgment of deficient human intellect or attempt

to "supplement" it by assuming there are legislative gaps. We reaffirmed al-Shatibi's maxim: *"Every interest that contradicts the Sharia is in fact a harm,"* no matter how attractive it appears to human minds—for Allah knows what we do not. In contrast, unaided reason fumbles through conjecture, as demonstrated by the adverse outcomes of modern laws that contravene divine law (e.g., family law reforms, interest-based economics, suspension of hudud punishments, etc.).

- **Fourth:** The concept of "public interest" (maṣlaḥah) in Islam—according to those who recognize it (even though we do not accept unrestricted maṣlaḥah mursalah)—is strictly defined by Sharīʿah parameters. It is not equivalent to personal whims or societal preferences. We clarified the difference between *legitimate Sharīʿah-sanctioned interest* (as defined by texts and principles) and the *illusory modern notions of interest* invoked by those influenced by Western values. The former is acknowledged only when confirmed by Sharia, even if not via specific textual proof—as long as it falls under general objectives. The latter (such as the so-called benefit of removing hijab or promoting illicit relationships) are in fact grave harms dressed in appealing language. Even the Mālekī school—which was most permissive in adopting maṣlaḥah mursalah—never accepted it as a basis to override established texts【shamela.ws】. It was used only to remedy emergencies or fulfill overwhelmingly clear advantages without breaching definitive rulings【shamela.ws】. Hence, any modern legislation framed under "interest" that contradicts fixed divine texts is invalid and rejected. Confusing "maqāṣid al-sharīʿah" with "public whim" is a critical methodological error. The former is a tool to *understand* Sharīʿah—not to suspend or alter it as some modernists attempt in the name of "evolution."
- **Fifth:** Critique of modern rationalist schools and two centuries of "Islamic Enlightenment." This study concluded that trends advocating reason-based legislation since the era of Muhammad ʿAbduh were built on prioritizing human interest over textual evidence, leading to serious contradictions and errors. Examples include:
    - The partial legalization of interest (as ʿAbduh did) normalized usury in Egypt's economy, which only worsened economic conditions.
    - Promoting "women's liberation" by abolishing Sharīʿah rulings (e.g., hijab, male guardianship) produced moral and familial harm.
    - Attempting to "Westernize Sharīʿah" by imposing secular legal frameworks disconnected the masses from religious law, creating identity confusion.
    - Most critically, the issues they tried to solve with rational reforms were not resolved. For example, in 2025 we still see rising family disputes, moral crimes, poverty, banking dependency, drug use, and insecurity despite decades of adopting "modern" family laws, financial liberalism, and lenient criminal codes.

All this confirms by lived experience that following revelation leads to stability and good, while following subjective reason under the guise of "interest" or "modernity" results in corruption and loss—as the Qur'an states: *"Had the truth followed their desires, the heavens and the earth and whoever is in them would have been corrupted."* (Al-Mu'minun: 71)

- **Sixth:** Affirming the urgent need to discipline methodologies of ijtihād and renew understanding within the framework of Sharīʿah. A key lesson is that scholars today must hold firmly to the principles of usūl al-fiqh in ijtihād—this means deriving rulings *within* the Sharia, not outside it. We must revive a systematic, text-bound legal methodology to address modern issues—not by speculation and personal opinion. True renewal (tajdīd) lies not in abolishing fixed rulings but in wise, context-sensitive application of them. The mistaken notion that "renewal = easing obligations and permitting prohibitions" is deeply misleading. The real reform is removing stagnation from our hearts and understanding divine intent, then applying Sharia with the strength of faith and clarity of mind. It is time for those engaged in Islamic thought to realize that empty attempts at reconciling with modernity only deepen our dependency. As Imam Mālek said: *"Nothing will rectify the last of this Ummah except what rectified its first."* That is, a sincere return to the Qur'an and Sunnah and their implementation under a rightly-guided Caliphate on the Prophetic model.

In conclusion, we declare our disavowal to Allah of all attempts to distort His religion under any pretense. It is now clear—by both textual and rational proofs—that claiming the superiority of reason or human interest over revelation is a form of *taking one's desires as a god*, as described in the Qur'an. This method is the final gateway through which

Islam's enemies seek to destroy the religion—not through direct confrontation, but by redefining it to match Western values under slogans like "religious reform." Let us be vigilant.

We recall here the words of Cheryl Benard in the RAND Corporation's *Civil Democratic Islam*, sponsored by the U.S. State Department: *"Other solutions include applying modernity's principle of interest (maṣlaḥah) or public welfare, as adopted by Muslim reformist jurists in the 13th century, which could override or even abrogate the Qur'an itself."* To her we say: *The Qur'an and Sunnah cannot be abrogated by any human rationale—period.*

Islamic Sharia is the eternal miracle of God—complete, comprehensive, and valid for all times and places. It does not change in its fundamentals or branches. There is no "fixed and flexible" distinction in its principles—it is all divinely revealed. Every attempt to undermine it will fail. History proves this: every time Islam is attacked, it emerges stronger, exposing the falsity of its rivals. The global Islamic revival of recent decades is proof that humanity's yearning for justice and divine guidance has not died, despite two centuries of secular dominance.

We must present our religion purely, as revealed by Allah, in its balanced form—offering genuine justice and mercy, without alteration or compromise.

Let us beware of falling twice into the trap of tampering with religion. Any call to place "interest" or "reason" above revelation is a trap meant to shake our certainty. Once doubt enters one ruling, it will creep into others—until the entire system collapses. This is what we observe in lands that abandoned the Sharia: what begins as reinterpreting one ruling ends in atheism and hatred of religion—God forbid. This validates the Prophet's ﷺ warning: *"You will surely follow the ways of those before you, handspan by handspan..."* — i.e., we will imitate past civilizations in their deviations. Today, Western civilization, with its deification of reason and lust, is the very "lizard's hole" we are being pulled into.

Lastly, we must reject the false claim that implementing Sharia "stifles reason" or "limits thought." Quite the opposite—Sharia provides reason with a firm framework to reason creatively and safely. It is following desire that blinds and enslaves the mind to trends and whims. In Islam, reason is honored—but only when it is the reason of a believing, obedient heart working within the divine framework of *"Allah said, and the Messenger said."* Unrestrained intellect, by contrast, is weightless, erratic, and contradictory—as seen clearly among the modern rationalists themselves.

We ask Allah the Almighty to return us to His religion beautifully, to make us aware of our steps, and to guide us steadfastly on the Straight Path. May He unite the ranks of Muslim scholars on a sound methodology that combines understanding of reality with deep knowledge of the texts, so they can re-present Islamic law to the world as a saving alternative amid global confusion and injustice. Truly, there is no salvation for humanity—Muslim or not—except in returning to divine revelation (Qur'an and Sunnah) to direct human thought and will toward truth and righteousness.

Allah Almighty has spoken the truth:

"So whoever follows My guidance will not go astray, nor suffer." (Taha: 123)
"But whoever turns away from My remembrance will have a depressed life." (Taha: 124)
"Indeed, this Qur'an guides to that which is most upright." (Al-Isra: 9)
"Today I have completed your religion for you, perfected My favor upon you, and chosen Islam as your religion." (Al-Ma'idah: 3)

All praise and thanks are due to Allah for the perfection of His religion and His infinite favor.

References List – Translated

- **The Noble Qur'an** – The primary source for all legal and maqāṣid-based arguments cited throughout the study.
- **Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim** – Principal sources of Prophetic traditions; some hadiths are cited implicitly, such as the ḥadīth of Muʿādh ibn Jabal regarding ijtihād and the narration "Whoever deems something good has legislated," transmitted by al-Bayhaqī from al-Shāfiʿī.
- **The Miracle of Islamic Legislation: Its Characteristics and Foundations** – by Thaer Ahmad Salameh (Abū Mālek). A contemporary reference addressing the miraculous and complete nature of Sharīʿah. Select ideas on legislative sovereignty being exclusive to God were drawn from this work.
- **The Black Box of Western Thought: The Crisis of the Modern State** – by Thaer Salameh. Quoted to critique the philosophical foundations of democracy and Western secularism, expose their legislative incapacity, and highlight their lack of a comprehensive moral reference point.

- **Al-Waʿy Magazine** (Issue 435, 2022) – Interview titled *"Who Has Authority? Who Holds the Right to Legislate – God or Man?"* by Thaer Salameh. Used to affirm that legislative sovereignty belongs solely to God and to analyze historical manifestations of human legislative sovereignty.
- **Public Interest and the Blameworthiness of Caprice** – A radio article from the Ḥizb al-Taḥrīr website (2010). Benefited from it in highlighting the danger of invoking *maṣlaḥah* (interest) to alter rulings—such as permitting usury or legitimizing reconciliation with Zionists. Also cited its useful definitions for contested sources of law.
- **Al-Shakhṣiyyah al-Islāmiyyah, vol. 3 (Uṣūl al-Fiqh)** – By Shaykh Taqī al-Dīn al-Nabhānī (1953). A critical uṣūlī reference. Quoted implicitly to represent his rejection of *al-maṣāliḥ al-mursalah* as an independent source of law, arguing they do not attain the epistemic strength of agreed-upon legal evidences.
- **Theory of Knowledge and Methods of Thinking and Inference** – By Thaer Ahmad Salameh. Used for its treatment of rational knowledge and its limitations, and for its call to reconnect Islamic thought with reason independently of Greek frameworks. Its framing of rational axioms and the coherence of Sharīʿah were also consulted.
- **Ijtihād and Taqlīd**, a chapter from *Al-Shakhṣiyyah al-Islāmiyyah, vol. 1* – Provided principles such as the definition of ijtihād as the exertion of utmost effort to derive a ruling from its evidence, and the proper rules of taqlīd. These helped structure the correct methodology for reasoning.
- **Aḥkām al-Qur'ān by Imām al-Shāfiʿī** – Referenced regarding *istihsān*, quoting his famous criticism of the concept when applied without clear evidence.
- **Iʿlām al-Muwaqqiʿīn by Ibn Qayyim al-Jawziyyah** – A foundational source on fatwā and legal theory. Quoted in support of the maxim: "Every benefit that contradicts Sharīʿah is in reality a harm."
- **Sayings of Classical Scholars and School Imāms** – Gathered from several sources:
    - *Al-Risālah* by al-Shāfiʿī (condemning *istihsān* without evidence),
    - *Al-Iʿtiṣām* by al-Shāṭibī (on *al-maṣāliḥ al-mursalah*),
    - *Al-Muwāfaqāt* by al-Shāṭibī – exploring maqāṣid al-sharīʿah and the hierarchy of necessities,
    - Works by Ibn Taymiyyah (*Fatāwā*, *Darʾ Taʿāruḍ*) – asserting no contradiction between sound reason and revelation,
    - Ibn ʿAbd al-Barr (*Jāmiʿ Bayān al-ʿIlm*) – cited for his remark that whoever views an innovation as good is accusing the Prophet ﷺ of betrayal,
    - *Siyar Aʿlām al-Nubalā'* – Quoted for stances like Imām Mālek's rejection of forcing people to follow his school, and Abū Ḥanīfah's maxim: "They are men and we are men."
- **Contemporary Laws and Official Documents:**
    - *Tunisian Personal Status Code* (1956) – Referenced for its prohibition and criminalization of polygamy.
    - *Tunisian Equality Committee Reports* (2018) – Quoted for their arguments on equal inheritance.
    - *Egyptian Khulʿ Law* (2000) – Mentioned for its social impact.
    - *International Protocols* – (e.g., CEDAW) alluded to in discussions of Western pressure to secularize Muslim laws.
- **Socioeconomic Statistics:**
    - Divorce rates, crime, debt—sourced from international reports and credible news – used to support real-world consequences (e.g., rise in theft where ḥadd punishments were suspended).
    - Reports from financial organizations – used to illustrate how usury has harmed national economies (e.g., public debt data).
- **Reliable Online Resources:**
    - *IslamWeb* (Fatwa Section) – Used a ruling on the impermissibility of suspending ḥudūd punishments.
    - *IslamQA* – Consulted for views on the invalidity of laws that contradict Sharīʿah (ideas cited without direct quotation).
    - *Khotwa Center for Studies* – Quoted an article on *ijtihād and taqlīd* in the thought of Muhammad ʿAbduh, particularly his stance on *sharṭ al-wāqif* (conditions of the endower).
- **Contemporary Works:**
    - *Guidelines on Maslahah in Islamic Law* by Dr. Ṣāliḥ bin Ḥumayd – Consulted for placing restrictions on the use of *maṣlaḥah* in the latter parts of the study.

- *Applications of Maqāṣid al-Sharīʿah* by Dr. Aḥmad al-Raysūnī – Some critical ideas were referenced.

These references provided both direct citations and foundational concepts throughout the study. Care was taken to balance traditional heritage with contemporary research, ensuring a comprehensive perspective.

We ask Allah for success in merging academic precision with public understanding, and for skillfully integrating textual sources with the lived realities of our time to extract meaningful insights.

And may peace and blessings be upon our Prophet Muhammad, who left us upon a clear white path, whose night is like its day, from which none deviates except the doomed.

And our final word is Praise be to Allah, the Lord of all worlds.

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About the Author

Thaer Ahmad Salameh

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A writer and researcher specializing in Islamic philosophy, epistemology, and political legitimacy. His work is dedicated to grounding Islamic thought upon a rigorous critical methodology that harmonizes rational proof with the guidance of revelation. He aims to reconstruct Islamic concepts in response to contemporary deviations, whether arising from Western thought or the disintegration of Islamic consciousness. His writings focus on affirming Islamic belief through rational and scientific foundations, developing epistemological methodology, exploring divine and historical laws (sunan), and demonstrating the miraculous nature of Islamic legislation.

Key Publications:

1. **Epistemology and Methods of Thinking and Reasoning** – A foundational reference for structuring Islamic inferential methodology. It explores the origins of knowledge, the distinctions between Islamic and Greek epistemologies, and deconstructs modern conceptions of science and reason. It reconnects experimental reasoning with the intellect and establishes an independent Islamic path of thought.
2. **The Origin of the Universe: A Rational, Scientific, and Sensory Proof for the Existence of the Creator** – Presents logical and scientific evidence that the universe arose not by chance but through meticulous design. It discusses physical laws, the principle of fine-tuning, and cosmic constants as proofs of a wise Creator.
3. **The Origin of Life: The Miracle of the Cell and the Proof of the Creator's Existence** – An analytical journey through the complexity of life from the first cell to the human being, demonstrating the impossibility of life arising by chance. It refutes materialist and Darwinian theories and establishes the purposeful design of divine creation.
4. **The Moment of Creation: When Quantum Physics Halted** – A scientific rebuttal to "universe from nothing" theories. *(Available in Arabic and English.)*
5. **The Orbits of the Heavens: Miraculous Design and Astonishing Cosmic Secrets**.
6. **The Greatest Cosmic Secret** – How the ideal ratio 2.01 between quarks and the precise 1.293 MeV difference between the neutron and proton determine the fate of the entire universe. *(Available in Arabic and English.)*
7. **An Attempt to Interpret the Verse: "The heavens and the earth were a joined entity, and We separated them."** *(Available in Arabic and English.)*
8. **An Attempt to Interpret the Stages of Creation of the Heavens and Earth in Six Days** *(Available in Arabic and English.)*
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